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VENEZUELA-BRITISH GUIANA BOUNDARY ARBITRATION

THE PRINTED ARGUMENT

ON BEHALF OF THE

UNITED STATES OF VENEZUELA

BEFORE THE

TRIBUNAL OF ARBITRATION

J. M. DE ROJAS,
Agent of Venezuela.

BENJAMIN HARRISON,
BENJAMIN F. TRACY,
S. MALLET-PREVOST,
JAMES RUSSELL SOLEY,
Counsel for Venezuela.

IN TWO VOLUMES.—VOLUME 1.

NEW YORK
THE EVENING POST JOB PRINTING HOUSE, 156 FULTON STREET
1898

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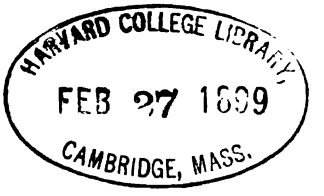

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Pursuant to Article VIII of the Treaty of Arbitration signed at Washington on the 2nd day of February, 1897, between the United States of Venezuela and Her Majesty, the Queen of Great Britain and Ireland, the Agent of Venezuela before the Arbitration Tribunal has the honor to submit herewith the printed argument prepared by the counsel for Venezuela.

The Agent also has the honor to present a number of papers which have been prepared by His Excellency Señor Rafael Seijas, formerly Minister of Foreign Affairs of the Republic of Venezuela, as also two papers prepared by the undersigned Agent.

The papers by Señor Seijas and by the undersigned will be found at pages iii—lxxx of Volume II.

Respectfully submitted,

J. M. DE ROJAS,

Agent of Venezuela.

WASHINGTON, D. C., December 15, 1898.

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NEW YORK, December 15, 1898.

Your Excellency:

We have the honor to hand you herewith the printed argument prepared by us, as counsel of the United States of Venezuela, in order that, in pursuance of Article VIII of the Treaty of Arbitration between Venezuela and Great Britain, signed at Washington, February 2, 1897, it may be delivered to the Arbitrators and to the Agent of the British Government.

Very respectfully,

BENJAMIN HARRISON,
BENJAMIN F. TRACY,
S. MALLET-PREVOST,
JAMES RUSSELL SOLEY,
Counsel for Venezuela.

To His Excellency, J. M. DE ROJAS,
Agent of Venezuela.

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CORRECTIONS.

	For	*Read*
Page 82, par. 2, line 1	That Sir Robert	Sir Robert.
" 156, " 4, " 3	had anywhere	had yet had anywhere.
" 168, " 3, " 3–4	of the river named	of that river, named.
" 173, 6th line from last	"as the.	as "the.
" 314, par. 4, line 1	explained (p.)	explained (p. 162).
" 316, " 1, " 2–3	Spaniard"—evidently	Spaniard" (B. C. I, 213), evidently.
" 316, " 3, last line	(B. C.,)	(Argument, pp. 531–551).
" 329, " 2, line 12	(p.)	(p. 155).
" 336, " 2, " 1	Storm claimed he transmitted	Storm transmitted.
" 337, " 2, " 7	(p.)	(p. 316).
" 337, " 2, " 8	1894	1694.
" 337, " 2, " 8	Spaniard, ... administration"	Spaniard," .... administration.
" 337, " 3, lines 1–2	boundaries. Put in limitation to	boundaries to.
" 339, " 3, line 6	(V. C. II, 99)	(V. C., II, 117).
" 340, " 5, last line	(p.)	(p. 329).
" 343, " 5, line 2	letter last quoted	letter of August 1761.
" 349, " 1, lines 5–6	which never went	which went.
" 370, " 5, line 1	adversary	adverse.
" 393, 4th line from last	(pp.)	(pp. 9–67).
" 394, par. 5, line 1	(1)	(3).
" 394, " 6, " 1	(2)	(4).
" 395, " 2, last line	(Ch. VII, pp.)	(Ch. V, pp. 153–177).
" 397, " 6, last line	(B. C. I, 167)	(B. C. I, 187).
" 399, " 4, " "	(B. C.)	(B. C., p. 35).
" 405, " 1, line 5½		*Add* The British Case (p. 28) states:
" 408, " 6, " 6	(B. C.)	(V. C.-C., II, 102).
" 409, " 1, last line	(V. C. II, 318)	(V. C.-C., II, 107).
" 412, " 2, line 5	200	300.
" 412, " 6, " 3	(V. C. II, 55)	(B. C. II, 55).
" 413, " last line	(B. C. II,)	(B. C. II, 68).
" 416, " 7, line 4	as	of.
" " " 7, " 5	of	as.
" 419, " 5, last line	(p.)	(pp. 487–492; also V. C.-C. I, 56–58).
" 422, " 1, last line	(B. C.)	(B. C., II, 130).
" 428, " 4, line 6	past	post.

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	For	Read
Page 432, last par., line 1	this statement	these statements.
" 433, par. 1, last line	occurred	according.
" " " 5, last line	1764	1754.
" 441, last par., line 4	Governor General, Don	Governor General. Don.
" 466, par. 1, last line	(B. C. VII,)	(B. C. VII, 22, 25–27).
" 468, " 1, " "	kind, anybody	kind, by anybody.
" 479, " 8, " "	fort at Orinocque	fort here, to Orinocque.
" 487, " 2, line 4	rights of in	rights of Spain in.
" 488, " 1, " 6	Cuyuni, or exercised	Cuyuni ever exercised.
" 495, " 1, " 4	where	were.
" 495, last line	as to make	as to making.
" 496, par. 2, line 6	can	could.
" 500, " 3, " 5	meaning be conveyed	meaning conveyed.
" 507, " 2, " 8	two years before	that same year.
" 509, last line	page	pages.
" 517, par. 6, line 3	not yet ventured	not ventured.
" 518, " 2, " 4	(B. C. VI, 180)	(B. C. V, 180).
" 521, first line	(V. C. II, 30)	(V. C. II, 330).
" 524, par. 3, line 1	(B. C. II, 36)	(V. C. II, 36).
" 540, " 1, " 4	which	this.
" 545, " 9, " 2	168	186.
" 553, " 2, " 6–7	to that the Spanish	to that of the Spanish.
" 555, " 3, " 4	carry the	carry away the.
" 558, " 1, " 10–11	accompanied continuous	accompanied by continuous.
" 558, next to last line	them	there.
" 617, par. 3, line 5	waste to the Dutch	waste the Dutch.
" 620, " 6, last line	they successfully	they had successfully.
" 628, " 4, line 2	1785	1755.
" 633, " 4, " 2	Chiefs	Captains.
" 637, " 4, " 5	Post	Posts.
" 639, " 2, " 7	were	was.
" 668, " 4, " 2	that	but.
" 693, " 1, " 3	(B. C. VI, 94)	(B. C. VI, 96).
" 696, " 3, " 3	between *this* and *Government* insert	country, and considering it unsafe to encourage this excessive influx of strangers into the.
" 696, " 5, " 2	would	could.
" 697, " 6, " 1	Barima], all	Barima] there are several Spanish Indians, all.
" 748, last par. lines 1–2	are *entirely uninhabited*	are *uninhabited.*
" 763, " " line 1	added, especially	added that, especially.

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CHAPTER I.

GENERAL OUTLINE OF THE CONTROVERSY.

The purpose of the Treaty by which this high Tribunal has been constituted is to make "a speedy and final settlement" of a boundary dispute of long standing, which arose in Guiana between the Kingdom of Spain and the Netherlands, and which was left unsettled by them at the time of the acquisition of their territories by their successors in title, Venezuela and Great Britain. Neither the Netherlands nor Spain is a party to the present controversy.

The original title of Spain to Guiana, that is to say, the territory between the Orinoco and the Amazon, rested upon discovery and occupation.

The mainland of South America was discovered by Columbus in 1498 in this very region. In the following years his lieutenants explored the coast between the Amazon and the Orinoco. During the first quarter of the sixteenth century, charters were granted and settlements established by Spain in various parts of South America, the city of Cumaná, a short distance to the west of the Orinoco, being one of the most ancient.

In 1530, a grant of Guiana was made by the Spanish Crown to Diego de Ordaz. The charter defined the grant as including the coast from the Orinoco to the Amazon. In 1531, Ordaz, in command of an expedition, took possession under his charter, ascending the Orinoco for six hundred miles. In 1537, his lieutenant, Herrera, ascended the Orinoco still further.

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Many other Spanish expeditions are recorded during the sixteenth century, the last and most important of them being that of Antonio de Berrio, which started in 1582 from Santa Fé, the capital of the New Kingdom of Granada, and proceeded down the Meta and the Orinoco, finally establishing settlements on the island of Trinidad and at Santo Thome, on the east or south bank of the Orinoco, and therefore in the territory of Guiana, in 1591. Berrio was appointed by the King of Spain, Governor and Captain-General of Guiana, and the boundaries of his province were defined as the Orinoco and the Amazon, and included also the island of Trinidad. In 1595, Vera, Berrio's principal lieutenant, brought out an expedition from Spain, numbering two thousand persons, as colonists, soldiers and missionaries.

During the ten years following the foundation of Santo Thome expeditions were made from time to time and at various points along the coast of Guiana and in the interior, of which formal possession was taken with solemn ceremonies by Berrio. The Essequibo is mentioned among the points frequented by Berrio's lieutenants. It was early settled by the Spaniards, and supplies of provisions for Santo Thome and Trinidad were obtained from there. Trade was carried on at that point and in the intervening territory of Barima and Moruca.

In 1581 the Netherlands formally renounced the sovereignty of Spain, of which they had until that time been the vassals, and the war then raging between the two countries continued until 1648, with an interval of truce from 1609 to 1621.

The first mention of a Dutch voyage to Guiana was in 1598, when a trading vessel of the Dutch ascended the Orinoco to Santo Thome. The Dutchman Cabeliau took part in the voyage and gave an account of it. It was purely a mercantile venture.

No Dutch settlement is mentioned on the coast of Guiana prior to 1613, in which year the Spaniards surprised and destroyed their settlement upon the river Corentin. No Dutch settlement is known at this period west of the Corentin; but in 1615

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there was a settlement of Spaniards, who were engaged in tilling the soil in Essequibo.

In 1621, the truce having come to an end, the Dutch West India Company was chartered by the Netherlands for the purpose of concentrating Dutch trade and maritime enterprise in connection with both continents of America in the hands of a single company. About 1626 the company sent persons to "lie" in the river Essequibo, and at some time within the next eighteen years a fort was built upon the site of an earlier Spanish fort on the island of Kykoveral, situated in the Mazaruni River, close to the point at which it empties into the Essequibo.

By the Treaty of Munster (1648), at the end of the war, Spain acknowledged the independence of the Netherlands, and released and confirmed the possession to them of the places which they at that date "held and possessed." At that date the Dutch held and possessed several places in the territory of Guiana, such as Surinam, Berbice, and Essequibo. During the war they had also twice successfully attacked and sacked Santo Thome, the Spanish capital of Guiana. As far as the evidence shows, however, the westernmost of the places held or possessed by the Dutch at the date of the Treaty was the fort at Kykoveral.

Upon the facts, Venezuela contends that an original title was established and perfected by Spain to the whole of Guiana by discovery and occupation; that by the Treaty of Munster, at the close of the Thirty Years' War, Spain confirmed the Dutch title to the places they held and possessed at the date of the Treaty, which places they had acquired by conquest during the war, and that the westernmost of the places so held and possessed was the island of Kykoveral, to which access from the sea was only obtained by the river Essequibo; that therefore the river Essequibo, with the said island, forms the western boundary of Dutch acquisition in 1648, and determines the western limit of the Dutch territories at that period.

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During the following period, lasting for one hundred and sixty-six years, the Dutch remained in possession of the Essequibo, and gradually developed a settlement and plantations on that river. At first the centre of settlement was the island of Kykoveral, the plantations being grouped around it on the neighboring banks of the Essequibo, the Cuyuni and the Massaruni.

All these rivers, at a distance of less than twenty miles from their point of union, are obstructed by falls or rapids, at which point navigation ends. The settlements never went beyond these falls. Their tendency during the whole period of Dutch rule was down the river, until finally the neighborhood of the original post was almost abandoned, the plantations growing in number and extent, however, towards the river mouth.

In 1658 a new colony was established on the Pomeroon, a river about thirty miles northwest of the Essequibo, emptying into the sea. This was destroyed by a hostile English attack in 1665, again founded in 1686, and finally destroyed by the French in 1689. From that time Dutch dominion on the Pomeroon was only asserted by a trading post. The territory west of Moruca, where the post was finally placed, the Dutch never settled, and hardly traversed, except in the early period for the purpose of trading with the Spaniards of Orinoco.

In 1674 the Dutch West India Company came to an end, and a charter was given to a new company, which took the place of the old one, but whose operations were restricted specifically to Essequibo and Pomeroon.

A great growth of Spanish settlement was witnessed in the territory on the upper Cuyuni and its tributaries, starting from the immediate neighborhood of Santo Thome, until at the end of the eighteenth century there were over thirty such settlements in this quarter, most of them conducted by Spanish missionaries. There were also important towns, such as Upata and Tupuquen. Great numbers of Indians established themselves with the

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Spaniards at the mission settlements, and under their direction and supervision engaged in agriculture or other occupations. The produce of these towns and settlements, especially the tobacco of Upata and the cattle and hides from the missions, became the principal exports of the Spanish colony. A fort was placed on the south bank of the Cuyuni, opposite the Curumo.

The Spaniards also maintained an occupation of the lower Orinoco, which gradually developed until at the end of this period there were five posts at intervals on the banks of the river or its islands below the old site of Santo Thome. Above that point was the capital, Angostura, and the important settlements of Suay, Piacoa and others, all on the south of the Orinoco. The lowest of the five posts on the river was a pilot station on Papagos Island, a short distance above the river mouth.

The dispute between Spain and the Netherlands as to the possession of territory west of the falls of the Cuyuni, in the interior, and of Essequibo, on the coast, first arose on the occasion of the stationing of a trading agent by the Dutch in the Cuyuni at a point about fifty miles from its mouth, or from thirty-five to forty miles above the falls which marked the limit of Dutch settlement. The Spanish Commandant of Guayana, asserting that this was an intrusion upon Spanish territory, destroyed the post in 1758 and made prisoners of the occupants, upon which the Netherlands made a remonstrance. The Dutch remonstrance was not pressed, and no attention was ever paid to it by Spain, which thereafter maintained an active patrol of the interior and of the coast territory to the limits of Dutch settlement.

In 1810 Venezuela declared her independence of Spain, and after a protracted war obtained its recognition.

By the final Treaty of Peace and Recognition between Venezuela and Spain, dated March 30, 1845, Spain "renounces for herself, her heirs and successors the sovereignty, rights and action which she has upon the American territory known under the

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old name of Captaincy General of Venezuela, now Republic of Venezuela." (V. C., vol. iii, p. 48.)

Article II defines the territory thus renounced and ceded as follows:

"In consequence of this renunciation and cession H. M. recognizes the Republic of Venezuela as a free, sovereign and independent nation, composed of the provinces and territories mentioned in her Constitution and other posterior laws, to wit: Margarita, *Guayana*, Cumana, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure, Merida, Trujillo, Coro and Maracaibo and any other territories or islands which may belong to her." (V. C., vol. iii, pp. 48–49).

The boundary of the province of Guayana is stated in the *Instruccion* of Don Jose Abalos, Intendant General of the Captaincy General of Venezuela, in February, 1779, "for the settlement of the Province of Guayana," as follows:

"The boundaries of the said Province of Guayana, which begins, on its eastern side, to windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo." (B. C., IV, pp. 194–195.)

During the war of 1803 the British took Essequibo and held it by military occupation until 1814. By the First Additional Article of the Treaty of London dated August 13, 1814, the Netherlands ceded to Great Britain the "establishments of Demerara, Essequibo and Berbice." (V. C., vol. iii, p. 47.) The territory ceded came subsequently to be known as British Guiana.

It has been the contention of Venezuela that at the time of the acquisition of British Guiana by Great Britain, in 1814, the western boundary of the Dutch territory was the boundary which had been established by the Treaty of Munster, and that the Spanish title to the territory west of that boundary had not been divested by any act of the Dutch in the intervening period; that in so far as the rule of adverse holding which has been agreed to

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by Venezuela in the Treaty of Arbitration is concerned, no extension of Dutch settlement or control beyond the boundaries heretofore named has brought the Dutch occupation during this period within the terms of the rule, and that the boundaries existing in 1814 are, therefore, the same as those existing in 1648.

No question as to the boundary arose between Venezuela and Great Britain until 1841, when the British Surveyor Schomburgk set up boundary posts along a certain line, afterwards known as "the Schomburgk line," upon territory to which Venezuela claims title. Upon the protest of Venezuela, Great Britain disclaimed any intention of asserting dominion by the placing of the posts, and removed them. A negotiation between Lord Aberdeen and Señor Fortique thereupon took place in reference to the boundary, which, however, came to no result.

As to the period from 1814 to 1897, Venezuela contends that, under the terms of the Treaty by which the Arbitrators were directed to "investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by, the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana," the consideration of acts performed by Great Britain subsequent to this period is excluded, in so far as the question of establishing the title by adverse holding is concerned.

The apprehension of attempts to occupy the territory in dispute led, in 1850, to an exchange of notes between the two parties, embodying an agreement on the part of each not to occupy or encroach upon the territory in dispute. Charges have been made on one side or the other of violations of the agreement, and, in consequence of Great Britain's refusal to withdraw her stations and officials from the disputed territory, diplomatic relations were broken off by Venezuela in 1887. The agreement has never been abrogated, however, and was appealed to by Great Britain as late as the year last mentioned.

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Negotiations have from time to time been attempted in reference to the boundary, in the latest of which, that in 1893, Great Britain laid claim not only to the territory bounded by the Schomburgk line, but to a vast region to the west of it, including territory which had been occupied by the Spanish settlements of the eighteenth century. These negotiations have proved fruitless.

During the last twelve years settlements have been made in the disputed territory under the authority of Great Britain, lands have been allotted, plantations established, numerous police stations and Government offices have been erected, and an enormous revenue has been derived by the Colonial authorities from the royalty on gold mining.

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CHAPTER II.

THE TREATY OF ARBITRATION.

Before proceeding to the consideration of the facts which are made, by the Treaty, the subject of inquiry in the present controversy, it is necessary to examine the provisions of the Treaty itself.

I. THE PURPOSE OF THE TREATY.

The purpose of the Treaty of Arbitration entered into by and between the Governments of Great Britain and Venezuela is stated in the preamble as follows:

"Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the United States of Venezuela, being desirous to provide for an amicable settlement of the question which has arisen between their respective Governments concerning the boundary between the Colony of British Guiana and the United States of Venezuela, have resolved to submit to arbitration the question involved."

II. THE QUESTION IN CONTROVERSY.

The duty imposed upon the Tribunal is stated in Article I of the Treaty as follows:

"An Arbitral Tribunal shall be immediately appointed to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela."

The first point to be noticed in the Treaty is that the question in controversy, as established both by the preamble and by Article I, is "to determine the boundary-line between the Colony of British Guiana and the United States of Venezuela." This fact is of prime importance. What is to be determined is the boundary line, and the boundary line between two States. It is a single line. The States are recognized as coterminous. The territory in question is territory that belongs either to one or to the other. There are not two boundary lines to be fixed. There is no inter-

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mediate stretch of territory between the two States which belongs to neither. The boundary is a line which marks not only the frontier of one, but the frontier of the other.

This statement of the question in controversy is in accordance with the history of the dispute. From the time the question of frontiers first arose by the confirmation of the Dutch title to what they "held and possessed" in 1648, it has been a question of a boundary line between two coterminous States. It has never been regarded otherwise by either the present contestants or by their respective predecessors in the title, Spain and the Netherlands. There never has been a time when either party admitted or in any way implied the existence of an unappropriated belt of territory between them. Nor has any third party ever suggested the existence of such a belt.

The British Counter-Case, however, ignoring the fundamental article of the Treaty that the question to be decided is a single boundary line, and that the territories of the parties to the Treaty are thereby recognized as coterminous, advances an extraordinary proposition, of which no intimation is conveyed by the Case, as to the acts of Great Britain during the present century as a foundation for British territorial claims. It states (p. 108):

"Moreover, there has been nothing to prevent the extension of British settlement and control if the regions into which such extension was made were at the time lying vacant. Territory added to the British Colony by such extension cannot be awarded to Venezuela, however recent the British possession may have been."

The meaning of the above passage depends entirely upon the significance of the word "vacant." If by that word is meant merely "unoccupied by settlements," no more extravagant pretension was ever made as to the right of territorial extension. It would amount to saying that any State may extend its settlement and control into adjoining regions which were unoccupied by actual settlement, irrespective of any question of title to those regions. It would mean, for example, that the United States

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might, by means of settlement and control, extend the boundaries of Alaska, or even of the States lying on its northern frontier, by the mere encroachments of settlers under its political control into the neighboring territory of British Columbia, on the ground that "the regions into which such extension was made were at the time lying vacant." It is an attempt to make frontiers dependent not upon title, but upon settlement; and if such a theory were correct, no State would be safe from encroachment unless its frontier territory was populated throughout its whole extent. If, on the other hand, by the words "lying vacant," as used in the above passage, it is meant, "not under any claim of title by a civilized State," then the proposition has no application to the present controversy, unless, at the time of the encroachments, there was a region of territory, intermediate between Venezuela and British Guiana, which belonged to neither; which was under no claim of title by any civilized State; or, in fine, which was *terra nullius*.

The Counter-Case, however, leaves no doubt that of the two meanings above suggested the latter is the one intended to be conveyed. It makes the statement, on page 114:

"Great Britain denies that her present occupation (extending to the Schomburgk line) does in fact include any greater extent of territory than was occupied or politically controlled by the Dutch and by Great Britain since her succession to the Dutch title. The only change has been that in the last fifteen or twenty years her occupation of the outlying districts has been marked by more complete political administration. But even if that were not so Her Majesty's Government would be entitled to retain the whole territory up to the Schomburgk line, on the simple ground that at the date of the Treaty of Arbitration they were in possession, and that the territory in question cannot be shown to have ever belonged either to Spain or Venezuela." (B. C.-C., p. 114.)

The above passage makes it clear that in the previous citation the regions that are referred to as "lying vacant" were regions that belonged to nobody. The passage lays down three propositions:

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(1) That the territory in dispute, up to the Schomburgk line, belonged neither to Spain nor to Venezuela.

(2) That at the date of the Treaty of Arbitration, Her Majesty's Government were in possession of it.

(3) That by reason of this fact alone, even without any earlier occupation or political control by the Netherlands or by Great Britain, they are entitled to retain the whole territory.

The propositions above cited amount to saying that if the territory in dispute was not Dutch, neither was it Spanish, and as certainly no third party had a claim to it, it was open to the occupation of the first comer; that no other State having taken possession, and that Great Britain at the time of the Treaty of Arbitration, namely, 1897, having acquired such possession, her title is thereby established.

The above claim is in substance a claim that the boundary line shall be determined not, as provided in Article III of the Treaty, by the conditions existing in 1814, but by those existing at the date of the Treaty of Arbitration in 1897. It ignores all reference to 1814; ignores the Spanish title originally established over the whole of this territory, and the indisputable fact that both parties to the controversy have from the beginning regarded the territory in controversy as belonging either to one or the other.

While the question whether any portions of Europe or America were a subject of colonization by the civilized world may have been open to discussion in the last century, it can hardly be said to be open to discussion now. The question whether territory in a given locality is open to colonization is a question of fact, depending upon whether that territory has been so occupied by any civilized State that a title has been acquired thereto. We shall have occasion repeatedly in the course of this argument to refer to the fact that a large part of the territory of many civilized States is more or less destitute of settlement. The fact is true even of some European countries. It is also true of large tracts of territory on the American conti-

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nent. The title, however, of the States within which such territories are included is not thereby rendered inoperative, nor are such territories, by reason of their unsettled character, the subject of colonization by any and every civilized State that may undertake the planting of colonies. Certainly this is true of the entire continent of Europe, whether settled or unsettled. It is submitted that as to the continent of America, for very many years, it has been equally true. To claim that at any time, within the last half of the 19th Century, portions of America, by reason of their unsettled character, were like the unsettled and unoccupied parts of Africa, is to disregard the evidence both of history and political geography.

It is not alone, however, the history and political geography of the American continent in general which are appealed to in opposition to the doctrine of *terra nullius* thus advanced in the present controversy. The history and political geography of this particular region absolutely negative such an idea. Whatever may be said of the condition of this region during the one hundred and sixty-six years between the Treaty of Munster and the Treaty of London, it cannot be said that it was nobody's territory. The controversy as to the territory was a controversy between the Spanish and the Dutch alone. Not a shadow of claim was ever put forward to it during this period by any other State. The occupation of it was either Dutch or Spanish occupation. The control of it was either Dutch or Spanish control. The title to it was either Dutch or Spanish title. Any part of it that was not Spanish was Dutch. Any part of it that was not Dutch was Spanish. Wherever the true boundary line of the territory acquired by Great Britain may be found to have been at the date of the acquisition, that boundary line was a boundary between Spanish and Dutch possessions. It was not two boundary lines, separating the territory of the Netherlands, on the one hand, and of Spain on the other, from a neutral belt of unoccupied territory, of nobody's property, open to all the world, intermediate between the two.

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Wherever it was, it was a single boundary between coterminous States, and it is so regarded by the Treaty.

Every fact advanced in behalf of the Venezuelan claim, on the one hand, and in behalf of the British claim, on the other, in the history of the century and a half intervening between the two Treaties goes to disprove the existence of such a neutral belt. The determination of the single boundary could have been made in 1814 as exactly and certainly as it is to be made now. Nobody but the two claimants was concerned in the dispute; no occupation was ever projected or attempted, much less carried out, by any other State upon this territory. Spain and the Netherlands were left to fight out the question between them, and upon every occasion upon which the question arose it will be found that it was treated on both sides, during this whole period, solely as a question where the line of demarcation between the territories of the two States should be run.

The extravagance of this extreme British doctrine of a *terra nullius* existing as late as "the last fifteen or twenty years" can best be shown by referring briefly to the historical facts, any one of which is sufficient to contradict it, and all of which in order to its acceptance must be totally ignored.

The first of these is the original Spanish title. The inchoate title by discovery is admitted by the British Case. A vast number of acts, performed by the Spanish in the century and a half following discovery and preceding the acknowledgment of Dutch title to Essequibo in the Treaty of Munster, many of them acts performed while the Dutch were still the subjects of Spain, and therefore incapable of acquiring an independent title, perfected the inchoate title by discovery, as will presently be more fully shown.

The essential fact, however, which destroys the theory here advanced in the British Case of a neutral belt between the two colonies, which was *terra nullius*, is that, during the history of Dutch and Spanish control to the very time of British acquisition,

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neither party admitted the existence of such a belt, but both, on the contrary, repeatedly denied it either expressly or by implication.

No instance can be found where the territories of the two colonies are referred to otherwise than as being separated by a single boundary.

In 1712 the boundary was referred to in a session of the Society of Surinam, where it was spoken of as "the boundary in America between the subjects of the States-General and those of the King of Spain." (V. C.-C., vol. ii, p. 182.)

In 1746 the Commandeur at Essequibo called attention to the necessity of taking action in reference to the founding of a Spanish fort between the Orinoco and Essequibo, and said:

"I dare not take anything upon myself, especially as the proper frontier line there is unknown to me." (B. C., II, p. 45.)

Later in the year he again writes (*ib.*, pp. 46–47) of the peril to the colony "to have such neighbors so close by, who in time of war would be able to come and visit us overland, and especially to make fortifications in our own land is in breach of all custom. I say upon our own land—I cannot lay this down, however, with full certainty because the limits west of this river are unknown to me."

In 1750 he reported (*ib.*, p. 67):

"Because the limits are unknown, we dare not openly oppose them."

In 1754 the Director-General of the colony is awaiting "the so long sought definition of the frontier, so that I may go to work with certainty." (V. C., vol. ii, p. 113.)

In 1758, on the occasion of the capture of the Dutch post in the Cuyuni, the two parties to the dispute laid claim to the same point of territory, each contending that it appertained to its own colony—a conclusive proof that the territories were coterminous.

In the same year the Director-General at Essequibo referred (*ib.*, p. 126) to D'Anville's map, and said:

"Our boundaries are portrayed on it."

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The map in question, which is shown in the British Atlas (map 16), shows a single boundary.

In 1759, the Director-General, discussing the boundary, referred to "the Wayne, which is pretended to be the boundary-line, (although I think the latter ought to be extended as far as Barima)." (B. C., II, p. 180.)

In the same letter, referring to the Cuyuni post, he sums up the situation by the statement that—

"In the same way as they are masters upon their territory to do what pleases them, so your Lordships are also masters upon yours." (B. C., II, p. 180.)

Here is no suggestion of intermediate territory.

In his letter of May, 1760 (B. C., II, p. 184), the Director-General referred to the line as "the dividing boundary in South America."

In 1767 he said (*ib.*, III, p. 141):

"That we, as well as the Spaniards, regard the River Barima as the boundary division of the two jurisdictions, the east bank being the Company's territory, and the west bank Spanish."

In 1794 Sirtema van Grovestins, the first Governor-General of Essequibo after the final termination of the West India Company's charter, refers (V. C., vol. ii, p. 248), in a letter to the Council of the Colonies, to "the creek of Moruca, which up to now has been maintained to be the boundary of our territory with that of Spain."

In the *Instrucción* of Don José Abalos, Intendant-General of Venezuela in February, 1779 (B. C., IV, p. 194), "for the Settlement of the Province of Guayana," he refers to "the boundaries of the said Province of Guayana, which begins, on its eastern side, to windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo."

Guayana is specifically named as among the provinces of the Captaincy General of Venezuela, renounced and ceded by the

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Spanish Crown by the Treaty of Peace and Recognition between Venezuela and Spain in 1845 (V. C., vol. iii, pp. 48-49).

In 1801 the Dutch Council of the American Colonies, with the approval of the Government, secretly sent an envoy to the Congress of Amiens with confidential instructions to "try to have the limits between the Batavian [Dutch] and Spanish possessions in South America irrevocably defined." (V. C.-C., vol. ii, p. 189.)

In 1808, during the British occupation, the Secretary of Demerara, writing an official letter to Gerrit Timmerman, appointing him Protector of the Indians, names the district which is placed under his supervision as "the west coast of the aforesaid Colony from the Creek Supename right up to the Spanish boundary, the River Pomeroon being included therein." (B. C., V., p. 191.)

Finally, the proposition of Lord Salisbury with which the negotiations resulting in the present Treaty of Arbitration was begun is conclusive as to the position of the British Government that the territories of Spain and the Netherlands were coterminous in 1814, and that there was only a single boundary line between them. Lord Salisbury's proposition, made May 22, 1896, was that a mixed commission be appointed "to investigate and report upon the facts which affect the rights of the United Netherlands and of Spain, respectively, at the date of the acquisition of British Guiana by Great Britain. . . .

"Upon the report of the above Commission being issued, the two Governments of Great Britain and Venezuela, respectively, shall endeavor to agree to a boundary line *upon the basis of such report.*" (V. C., vol. iii, p. 305.)

Lord Salisbury then proposes that "failing agreement, the report, and every other matter concerning this controversy on which either Government desire to insist, shall be submitted to a tribunal . . . which tribunal shall fix the boundary line *upon the basis of such report*, and the line so fixed shall be binding upon Great Britain and Venezuela."

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Whatever inferences may be drawn from this proposition of Lord Salisbury in reference to other questions, one thing is certain: that it necessarily implied the existence of a single boundary line in 1814, and as necessarily excluded any possibility at that date of a "vacant" territory between the two countries.

The principle advocated by Lord Salisbury was embodied in the Treaty, which, by providing for the ascertainment of the territorial limits in 1814 and by calling for the determination of "a boundary line" between the two countries, negatives the idea that either in 1814 or at the date of the Treaty of Arbitration any such intermediate belt could have been in existence.

From the earliest consideration of this question by Venezuela and Great Britain, no suggestion has ever been made of an intermediate territory between the two countries. Beginning with the earliest negotiations, in 1844, between Lord Aberdeen and Señor Fortique, every discussion has been on the basis of a single boundary line between the two countries. These negotiations negative the theory that any intermediate territory existed in the view of either of the parties to the dispute.

III. THE DATE AS OF WHICH THE BOUNDARY IS TO BE ASCERTAINED.

The Treaty next fixes the date as of which the boundary is to be determined. It says (Article III):

"The Tribunal shall investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana, and shall determine the boundary line between the Colony of British Guiana and the United States of Venezuela."

The first point necessarily to be defined by the Treaty was the scope of the inquiry to be made by the Tribunal in determining the question of boundary. The question here was upon what state of facts the Tribunal was to reach its decision. The history

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of this territory from its first discovery to the Treaty of Arbitration covered a period of four hundred years. For two centuries and a half the Dutch or their grantees had been at Essequibo. During all this time a boundary line had existed, although it had never been laid down. The line was necessarily to be ascertained as of some specific date, and it was necessary that the date should be named in the Treaty.

It was contended by Venezuela that the question of title was finally settled in 1648; that the extent of the territories of both parties, and therefore the question of title had been finally ascertained at that date, and that the boundary should be ascertained as of that date.

It was contended by Great Britain, on the other hand, that as the question of territorial limits had been seriously affected by acts occurring subsequently to the Treaty of Munster, the boundary should be determined as of a later date, to wit, the date of the British acquisition of British Guiana, in 1814.

The British contention prevailed, and the date was so fixed by the Treaty. Clearly the rights of Great Britain, while extending, under this provision of the Treaty, to the territory belonging to or that might lawfully be claimed by the Netherlands at the later date, were limited to such territory, and could not be extended by subsequent British encroachments. Such is the plain and obvious reading of the Treaty.

Nothing could be clearer from a mere inspection of the Treaty than the fact that the Arbitral Tribunal is to determine the true boundary line by ascertaining the extent of the Spanish and Dutch territories at the time of the acquisition by Great Britain of the colony of British Guiana; that the facts which it is to consider are facts bearing upon the conditions existing in 1814; and that, in considering the territorial rights and claims of the respective parties, either as arising under law in general or under the specific rules subsequently prescribed in the Treaty, no question can arise in reference to encroachments since 1814 upon Spanish or Venez-

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uelan territory of which the Dutch were not in possession at that date.

The Treaty recognizes the fact that a line existed as of right in 1814, which determined the possessions of the two contending parties at that date, and it is the extent of the territories at that date which the Tribunal is instructed to investigate and ascertain.

Although this proposition is so plain that an extended argument of it could hardly be required, it would appear to be disputed in the British Case.

It has, therefore, been deemed best at the outset to point out that the proposition here contended for is established not only by the language of the Treaty, but also by the equities of the case and the history of the controversy; that this treaty provision was adopted at the instance and upon the proposal of Great Britain herself and against the contention of Venezuela, as shown not only by the negotiations which led up to the Treaty, but, finally, by the position taken in the British Counter-Case itself.

1. The Language of the Treaty.

The Treaty in express terms fixes the date as of which the extent of the territories of the two contending parties shall be ascertained. That date is the time of the acquisition by Great Britain of the colony of British Guiana, namely, the date of the signing of the Treaty of London, in 1814. This date is actually prescribed as the date as of which the territorial limits on each side are to be ascertained and determined, and the fixing of the limits as of this date is the duty imposed upon the Arbitrators by the Treaty. Such being the case, no acts of Great Britain either in the nature of settlement or of control over territory of which the Dutch had no possession in 1814 can affect the question before the Tribunal.

This is the plain reading of the Treaty. If it is not, for what purpose and to what end was the Tribunal expressly directed to ascertain the extent of the territories of Spain and the Nether.

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lands respectively at the date in question? The Tribunal is not here to engage in an academic discussion; it is constituted to determine the boundary between Venezuela and British Guiana. By the agreement of the contending parties, its inquiry is to be directed to investigating and ascertaining the extent of the territories of each as they existed at the date when Great Britain acquired British Guiana. It surely could not be the intention of the Treaty that the Arbitrators, having solemnly reached a true line upon the basis laid down by the Treaty for the determination of a boundary, namely, the extent of the respective territories in 1814, were thereupon to cast aside the result of their deliberations, to reject the true line so ascertained, and to make a fresh start on the basis of some other date which is nowhere suggested by the Treaty. To hold otherwise would be to contend that this august Tribunal was directed in terms by the Treaty constituting it to reach an express conclusion which was not to be a conclusion; to determine a true boundary line which was not to be a boundary line; to consider, by "investigating and ascertaining," a state of facts expressly defined, which had been no sooner considered than it was to be thrown aside as unworthy of consideration.

Notwithstanding this provision, formulated in language as plain as could be devised, the British Counter-Case takes the position (pp. 107–8) that, under Rule (*a*) of the Treaty, which provides that adverse holding for fifty years may make a good title,

> "Great Britain is entitled to retain whatever territory has been held by her, or has been subject to her exclusive political control, for a period of fifty years, although the result might be to give to Great Britain territory which had never been Dutch, and might even conceivably have at one time been Spanish."

In support of this claim the British Case has offered an immense mass of evidence, comprising an entire volume of its Appendix, covering the history of the British colony since 1814, and has devoted Part II of the chapter on political control to "British Administration." (B. C., pp. 99–112.)

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If Rule (*a*) had been intended to apply to the period of British occupation or of British rule since 1814, why was the Tribunal of Arbitration expressly required "to investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed, by the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana?"

If no distinction is to be made in their effect upon the boundary question between acts belonging to the Dutch period and acts belonging to the British period, why was the Tribunal expressly instructed to direct its attention to the conditions existing at the time of the British acquisition, and not to the conditions existing at any other time? Under the theory of the British Counter-Case, the Tribunal is to give precisely the same consideration to what happened after this date as to what happened before, and the insertion of the fundamental instruction in the Treaty for the guidance of the Arbitrators is a meaningless string of words, to be rejected by the the Tribunal as utterly vain and purposeless.

It is not believed that the Tribunal will find itself able to adopt any such interpretation of the Treaty. That concise instrument was not drawn with the intention that its clauses and paragraphs should be regarded as mere verbiage, destitute of meaning and purpose. When it laid down in so many words that the extent of the territories was to be investigated and ascertained as it existed at a certain date, it meant that it should be investigated and ascertained as of that date. When it prescribed that date in its rule of investigation and ascertainment, it did not intend to prescribe as the rule of investigation and ascertainment some other date, namely, the date of the Treaty, the only date to which the investigation and ascertainment, under the contention of the British Counter-Case, can be referred.

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2. The Equities of the Case.

The controversy between the Netherlands and Spain had been from the beginning, and is stated in the Treaty as being, a controversy as to what should be the boundary between the two countries in South America; in the language of the preamble, "the question which has arisen between their respective Governments concerning the boundary between the Colony of British Guiana and the United States of Venezuela." The question was, and had always been, where a certain line should be fixed. Each side admitted, and each side claimed, that at any time during the history of the controversy a line could be drawn which should as of right form the true boundary. The dispute was as to where that line lay. The territories of the two States were contiguous. It was understood that everything which was not Dutch was Spanish; that everything which was not Spanish was Dutch; and no one disputed the fact that the title was in one or the other of these two, or set up any third claim to any part of the territory. The only question was as to the respective territories of each State, or, in other words, as to what was the exact geographical location of the line which marked the limitation of their coterminous frontier.

At the time of the British acquisition of the colony of Guiana the controversy had been agitated for more than half a century. During this entire period acts of territorial control had been repeatedly performed in the territory in question. The Dutch had attempted to establish a post in the territory for the purposes of trade and the recapture of runaway slaves, and the post had been destroyed by the Spanish authorities and the occupants arrested and imprisoned. The conflicting claims had been the subject of diplomatic correspondence and of active controversy, and all this had taken place a long time previous to the acquisition of the "Establishment of Essequibo" by Great Britain.

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It was a standing international controversy; the facts bearing upon it were matters of history; its notoriety and publicity were unquestioned, and it was a controversy to which Great Britain succeeded, upon the acquisition of the territory whose boundary was the matter at issue. Whatever the territory was that passed to Great Britain by the Treaty of London under the name of the "Establishments of Demerara, Essequibo, and Berbice," it was taken subject to the Spanish claim as to the disputed boundary.

At the time of Great Britain's acquisition of the "Establishment of Essequibo," a line existed as of right which formed the boundary between it and the adjoining territory of Spain, although the line had never been traced, and was the subject of controversy. It was plainly the intention of the Treaty that the determination of this line should settle the boundary dispute. It was not, and could not have been, its intention to allow one of the parties to it to set up a title founded upon its own encroachments upon the territory whose boundary at the outset of its acquisition might thus be fixed as of right, and so to take advantage of its own wrong committed while the controversy was pending. It was not, and could not have been, the intention of the Treaty to fix such a date for the ascertainment of the true line, as to include in its consideration every act of trespass which one party had been enabled by the simple operation of *vis major* to commit, and to make these very trespasses the foundation of title. Especially was this true when the parties had made a solemn agreement in 1850, which both repeatedly recognized and appealed to,—Her Majesty's Government, in one case at least as late as 1887,—and which never has been abrogated, that neither should extend its occupation on the territory in dispute—an agreement which by its very date precluded any fifty years' adverse holding subsequent to the date of the British acquisition.

In the nineteenth century the period was long since past when any territory could be acquired in South America by mere encroachment. Modification of frontiers might still be accom-

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plished by means of conquest and cession, but the advancement of a boundary line by simple appropriation of the territory of a neighbor was no more possible at that date in South America than it would be possible to-day in Europe or in North America. It was doubtless for this reason that the Treaty fixed the date of the acquisition by Great Britain of its Colony of British Guiana as the date to which the boundary question should be referred and which should mark the epoch whose conditions should determine its ascertainment. The reason for the provision, however, is purely a philosophical discussion. Directions to the Arbitrators are stated plainly in the Treaty, and whatever may have been the reason for the Treaty, the fact that the date was fixed by the Treaty is sufficient to dispose of the question.

3. The History of the Controversy.

A reference to the history of the controversy between Venezuela and Great Britain will abundantly disclose that Venezuela has always contended that British Guiana did not extend beyond the actual possessions of the Dutch at the date of the Treaty of Munster (1648). Her contention has been that by the Treaty of Munster the Dutch were limited to the settlements as they actually existed at that date; that they had no right to extend their territory beyond such limits; that any such attempted extensions were met by protests or resistance on the part of Spain, and were of no validity; that the limits of the territory which the Netherlands ceded to Great Britain in 1814 were no greater than the territory ceded by Spain to the Netherlands in 1648. Upon this reasoning Venezuela had sought to fix the date as of which the line should be ascertained at 1648.

If the Dutch actually possessed in 1648 any part of the disputed territory (which is denied), it was but an insignificant part of the territory which Great Britain now claims. Great Britain accordingly rested her case upon the proposition that, even though the title of the Dutch under the Treaty of Munster was limited to the

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territory which at that time they actually possessed in fact, she can now claim additional territory by virtue of a later occupation made by the Dutch between 1648 and 1814, and continued long enough to ripen into a title by prescription.

Such was the British claim, and it was admitted in the Treaty by fixing the date of determining the boundary of the territories at 1814, as against the Venezuelan contention of 1648, and such is undoubtedly the law of this case, made so by the express provision of the Treaty.

That this has been the history of the controversy between Great Britain and Venezuela from its commencement in 1841 down to the signing of the present Treaty in 1897, is clearly shown by the correspondence—Venezuela seeking to fix the line of 1648, and claiming that British territory could not go beyond this line; and Great Britain seeking to fix the line of 1814, and claiming thereby the benefit of all alleged extensions of the line of 1648 caused by the Dutch occupation.

The establishment in the Treaty of the date of 1814 as the date at which the Arbitrators should find the line was a diplomatic victory for Great Britain, and the recognition of the principle for which she had always contended. Nowhere, and at no time, has Great Britain ever asserted that the territory to which she now lays claim was other than that to which the Netherlands were entitled at the time of the acquisition by Great Britain of the "Establishments of Demerara, Essequibo, and Berbice."

4. THE CORRESPONDENCE LEADING UP TO THE PRESENT TREATY.

If the language of the Treaty in reference to this point admitted of any doubt as to the intention of the parties, the correspondence between the United States and Great Britain which immediately preceded and led up to the negotiation of the Treaty would remove it.

On May 22, 1896, Lord Salisbury, in a letter to Sir Julian Pauncefote, proposed a form of arbitration of the boundary dis-

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pute. His proposition was that, by agreement between Great Britain and the United States, a commission be created, consisting of four members, namely, two British subjects and two citizens of the United States, "to investigate and report upon the facts which affect the rights of the United Netherlands and of Spain, respectively, at the *date of the acquisition of British Guiana by Great Britain.* (V. C. vol. iii, p. 304.)

"This commission," Lord Salisbury proposed, "will only examine into questions of fact, without reference to the inferences that may be founded on them; but the finding of a majority of the commission upon those questions shall be binding upon both Governments.

"Upon the report of the above commission being issued, the two Governments of Great Britain and Venezuela, respectively, shall endeavor to agree to *a boundary line upon the basis of such report.* Failing agreement, the report, and every other matter concerning this controversy on which either Government desire to insist, shall be submitted to a tribunal of three—one nominated by Great Britain, the other by Venezuela, and the third by the two so nominated; which tribunal shall fix the boundary line *upon the basis of such report,* and the line so fixed shall be binding upon Great Britain and Venezuela. Provided, always, that in fixing such line, the tribunal shall not have power to include as the territory of Venezuela any territory which was *bona fide* occupied by subjects of Great Britain on the 1st of January, 1887, or as the territory of Great Britain any territory *bona fide* occupied by Venezuelans at the same date." (V. C., vol. iii, p. 305).

"In respect to any territory with which, by this provision, the tribunal is precluded from dealing, the tribunal may submit to the two powers any recommendations which seem to it calculated to satisfy the equitable rights of the parties, and the two powers will take such recommendations into their consideration."

"It will," continues Lord Salisbury, "be evident from this proposal that we are prepared to accept the finding of a commis-

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sion voting as three to one upon all the facts which are involved in the question of Dutch and Spanish rights *at the time of the cession of Guiana to Great Britain*. We are also prepared to accept the decision of an arbitral tribunal in regard to ownership of all portions of the disputed territory, *which are not under settlement by British subjects or Venezuelan citizens.*"

In reply to this communication, Mr. Olney (after pointing out the defects of the two commissions proposed by Lord Salisbury, and their inability to reach an effective conclusion, and to dispose finally of the question in controversy between the two governments), speaking of the commission of four which was to investigate and report the facts, said: "It is to report the facts affecting the rights of the United Netherlands and of Spain, respectively, *at the date of the acquisition of British Guiana by Great Britain*. Upon the basis of such report, a boundary line is to be drawn, which, however, is in no case to encroach upon the *bona fide* settlements of either party." (V. C., vol. iii, p. 306.)

Further pointing out the defects of the two commissions proposed, and suggesting that it was not apparent why the same commission should not be charged with determining all the facts which the controversy involved, Mr. Olney declared that Lord Salisbury's proposals, "looked at as embodying a practical scheme for a speedy and final settlement of the boundary dispute," could not be regarded as satisfactory. Further commenting upon Lord Salisbury's proposals, Mr. Olney (*ib.*, p. 308) says: "In the opinion of this Government, however, such *bona fides* on the part of the British settler is quite immaterial. So far as *bona fides* is put in issue, it is the *bona fides* of either Government that is important, and not that of private individuals. Suppose it to be true that there are British subjects who—to quote the dispatch—'have settled in territory which they had every ground for believing to be British,' the grounds for such belief were not derived from Venezuela. They emanated solely from the British Government; and if British subjects have been deceived by the assurances of their

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Government, it is a matter wholly between them and their own Government, and in no way concerns Venezuela. Venezuela is not to be stripped of her rightful possessions because the British Government has erroneously encouraged its subjects to believe that such possessions were British. * * * Venezuela's claims and her protests against alleged British usurpation have been constant and emphatic, and have been enforced by all the means practicable for a weak power to employ in its dealings with a strong one, even to the rupture of diplomatic relations. It would seem to be quite impossible, therefore, that Great Britain should justify her asserted jurisdiction over Venezuelan territory upon which British subjects have settled in reliance upon such assertion by pleading that the assertion was *bona fide* without full notice of whatever rights Venezuela may prove to have." (*ib.*, p. 308.)

"In the opinion of this government," continued Mr. Olney, "the proposals of Lord Salisbury's despatch can be made to meet the requirements and the justice of the case only if amended in various particulars.

"The commission upon facts should be so constituted, by adding one or more members, that it must reach a result, and cannot become abortive and possibly mischievous.

"That commission should have power to report upon all the facts necessary to the decision of the boundary controversy, including the facts pertaining to the occupation of the disputed territory by British subjects.

"The proviso by which the boundary line as drawn by the arbitral tribunal of three is not to include territory *bona fide* occupied by British subjects or Venezuelan citizens on the 1st of January, 1887, should be stricken out altogether, or there might be substituted for it the following:

"Provided, however, that, in fixing such line, if territory of one party be found in the occupation of the subjects or citizens of the other party, such weight and effect shall be given to such occupation as reason, justice, the rules of international law, and the equi-

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ties of the particular case may appear to require." (V. C., vol. iii, p. 309.

The suggestions made by Mr. Olney were substantially adopted. The proposal of Lord Salisbury, providing that the tribunal should not have power to include as territory of Venezuela any territory which was *bona fide* occupied by subjects of Great Britain, was stricken out. The commission of four was dropped, and the arbitral tribunal was changed from three to five. No change was made in the date as of which the territorial rights of the contending parties were to be ascertained.

The date as of which the true boundary line should be drawn was a vital fact, and its importance could not have been overlooked by either Lord Salisbury or Mr. Olney. It must be ascertained as of some particular date. All the facts bearing upon the rights of the parties as to that date must be investigated and the facts found in order that the true line may be ascertained. This date might have been: *first*, that of the acquisition by Great Britain of British Guiana, namely, 1814. The investigation would then involve the claims and the acts of two Governments not parties to this Treaty, namely, the Netherlands and Spain. Under such an inquiry, no act or fact arising subsequently to 1814 would be of the slightest materiality or relevancy. All the investigation would be directed to the history of the settlements made by the Netherlands of the territory in question, the character of the government which they had established, the extent of the territory over which they exercised jurisdiction, the nature, character and extent of their settlements; in short, every act or fact tending to prove the title of the Dutch to the territory in question would have been pertinent and essential to the ascertainment of the true boundary line, as showing the character and extent of the Dutch possession, which it asserted adversely to the prior title of Spain.

Or, *second*, the date of the inquiry might have been fixed as the date of the Treaty. Had the commission been required "to investigate and ascertain the extent of the territories belonging to

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or that might lawfully be claimed by British Guiana or by the United States of Venezuela respectively, at the date of this Treaty," a different and much wider field of investigation would have been opened, and other and different facts would require to be investigated, ascertained and determined. The whole history of this territory for nearly a century subsequent to 1814, all the acts and controversies, the correspondence, claims, assertions, denials, and acts of jurisdiction of the two countries respectively, would have been the subject of investigation, and would largely have constituted the basis of determination.

In this correspondence Lord Salisbury nowhere suggests that the boundary line should be ascertained as of the date of the Treaty of Arbitration. The only circumstances arising subsequent to 1814 which are referred to as having a bearing upon the question are stated in the proviso originally suggested, as follows:

"Provided, always, that in fixing such line, the tribunal shall not have power to include as the territory of Venezuela any territory which was *bona fide* occupied by subjects of Great Britain on the first of January, 1887."

This proposition was rejected, and at Mr. Olney's suggestion a rule was inserted in its place, which became Rule (*c*) of the Treaty, as follows:

"In determining the boundary-line, if territory of one Party be found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of the other Party, such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require."

Thus, every question, both of fact and of law, involved in the question of Dutch and Spanish rights in regard to the ownership of all portions of the disputed territory at the time of the cession of Guiana to Great Britain, was submitted to the ascertainment and determination of a single tribunal, with the express provision that the rights of ownership thus established in one of the parties over any territory should not be affected by the fact that such ter-

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ritory had subsequently been occupied by the subjects or citizens of the other.

5. The Position adopted by Great Britain in the Counter-case.

Finally, the foregoing contention is expressly admitted in the British Counter-Case. At page 114 her position is stated as follows:

"Great Britain denies that her present occupation (extending to the Schomburgk line) does in fact include any greater extent of territory than was occupied or politically controlled by the Dutch and by Great Britain since her succession to the Dutch title."

This important admission of the British Case shows the reason why Great Britain was willing to take the line of 1814 as the boundary to be fixed and to eliminate any acts subsequent to that date from the controversy, except as provided in Rule (*c*) That Great Britain should have agreed to the establishment of the line of 1814 was quite reasonable, in view of the fact that she does not *now* put forward any prescription based upon the extension by her of that line. It was not claimed in the diplomatic correspondence that led up to the Treaty, nor is it claimed in the British Case that Great Britain extended the line of Dutch occupation to any territory that she might now prescribe for under Rule (*a*) of the Treaty. It was also well known to Great Britain that the Agreement of 1850 cut off any possible claim by her to such a prescription. The British settlers, in whose behalf Lord Salisbury's solicitude was excited, had not entered the disputed territory before 1880, and, so far as their case might be regarded as matter of international consideration, it was provided for in Rule (*c*). It was because, as Great Britain herself states, her present occupation, meaning thereby her occupation not only up to the date of the Treaty, but up to the very filing of the Case, does not include any greater extent of territory than the Dutch occupied at the time of the cession. This is the fundamental fact in the interpretation of this clause of the Treaty—that British occupation of the present

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day extends no farther than the Dutch occupation which preceded it. Upon that statement, made solemnly in her own Case, Great Britain stands or falls. The fact once admitted that the present occupation is not in excess of the occupation of 1814, no reason can be shown for admitting evidence as to occupation since that date.

IV. THE THREE RULES OF THE TREATY.

The Treaty, having stated the general subject-matter of the arbitration as being the determination of the boundary line in accordance with the extent of the territories of Spain and the Netherlands respectively in 1814, proceeds to lay down three Rules, which, as well as the appropriate principles of international law not inconsistent with such Rules, are to govern the decision of the Arbitrators. Article IV is as follows:—

"In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to a decision of the controversy, and shall be governed by the following Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to be applicable to the case :

RULES.

"(*a*) Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription.

"(*b*) The Arbitrators may recognize and give effect to rights and claims resting on any other ground whatever valid according to international law, and on any principles of international law which the Arbitrators may deem to be applicable to the case, and which are not in contravention of the foregoing rule.

"(*c*) In determining the boundary-line, if territory of one party be found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of the other Party, such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require."

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RULE (a)

1. Adverse Holding—Duration and Character.

Rule (*a*), in reference to adverse holding, is as follows:

"Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription."

The subject of inquiry having been broadly laid down in Article III of the Treaty, namely, that the Arbitrators are to "investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by, the United Netherlands or by the Kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana," certain rules are added, which are to be followed by the Arbitrators in conducting this investigation and ascertainment. The rules do not change the subject of inquiry as thus broadly laid down, but serve as a guide to the Arbitrators in conducting the inquiry. That inquiry is as to the extent of the territories of the two parties in 1814. Manifestly, the subordinate rule cannot, by specifying certain applications of the principle of adverse holding, reverse the fundamental definition of the subject-matter of the arbitration, and be construed as enlarging the field of inquiry thus defined, because the date named in the primary definition is not repeated in the rule itself. Such an interpretation would nullify the fundamental basis of the Treaty.

Inquiry as to the facts constituting, or claimed as constituting, an adverse holding, within the meaning of the Treaty, must therefore be limited to matters occurring prior to 1814.

The term "adverse holding" means a naked holding or possession, by which title may be acquired, adversely or in opposition to the holder of the prior title. Of course a claim of adverse holding presupposes a prior title, as is admitted by the British Counter-Case, where the principle is thus stated at page 114:

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"But no question of adverse holding or prescription can arise except where one Power has occupied territory by right belonging to the other."

A plea of adverse holding is, therefore, an admission of the existence of a superior title, and the burden rests upon the claimant to show an adverse holding sufficient to establish a title.

The adverse holder must show actual settlement or exclusive political control for fifty years, but no specific requirement is prescribed in proving the anterior title. This is left to be determined by general principles of law.

"Adverse holding" is in general used of individuals and as bearing on the ownership of land under the municipal law of the State of whose territory it forms a part. In the Treaty, however, it is used of States and as bearing upon the title or right of sovereignty of a State in and to its territory. One relates to private title, or ownership of the fee; the other to public title, or dominion over the territory.

The foundation of title by adverse holding is the actual possession of land. The fact of possession is the determining fact in the creation of title. In the case of individuals, the fact of possession is one readily comprehended and recognized. In the case of States, it is a much more complex and difficult question. States do not act through individuals, but through governments. The acts of individual subjects of a State are not the acts of the State. The declarations of individuals are not the declarations of the State. The evidence of possession as to adverse holding is, therefore, not the same in the case of States as in the case of individuals. So also with the effect of adverse holding. The condition of private ownership, which expresses the relation of an individual to his land as the effect of adverse holding, is replaced by the condition of dominion or sovereignty, which expresses the relation of the State to its territory. In the case of States, the fact of possession must, therefore, be determined with reference to this effect of creating public title, that is to say, sovereignty or dominion; while, in the case of individuals, it is

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determined only with reference to the effect of creating private title or ownership.

In view of the fact that the question presented in this arbitration is a question not as to individuals, but as to States, with all that the distinction implies, the first point to be determined is: In seeking to establish the public title of a State by adverse holding what acts are to be deemed the equivalent of possession in the case of individuals?

The first requisite, which lies at the foundation of the whole subject, is that the act, whatever it is, must be a national act. The party here seeking to acquire title is the State. The possession must, therefore, be the possession of the State.

When the subjects or citizens of one State enter the territory of another and make settlements there, their acts are those of mere private individuals. Unless expressly authorized, or adopted by the State itself, to which they belong, they remain nothing more than private and individual acts. No claim of adverse holding can be made on behalf of the State, for the State itself has not entered. The act of entry must be a national act, in order to be the foundation of public title.

The settlement of persons associated together upon unoccupied territory of a foreign State is a matter of frequent occurrence; yet no claim could be made that such settlement operated, no matter how long it might last, to transfer the dominion of the land upon which they settled to the State of which they had been and might continue to be the subjects. A claim of adverse holding, to be made by a State, must be based on public acts of possession and control. It must in some way have the stamp of authority from the sovereign, either by holding under grants from him or by declarations made by him. Unless it is so defined as an act of sovereignty, it cannot become the basis of adverse holding to establish a sovereign's title.

The act must also be done under a claim of right, and a claim not only on the part of the individuals, but on the part of the sov-

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ereign who seeks to take advantage of their acts. This principle lies at the bottom of all adverse holding. Unless the adverse holder enters under a claim of ownership he does not oust the prior holder. He is understood to hold under the prior owner. The claim must, therefore, be a claim of territorial sovereignty, for nothing less would lay the foundation of public title, and it must be a claim made by the sovereign himself, because no one but the sovereign can assert such a claim. The claim, as a claim of the sovereign, must be open and notorious. No State can be permitted to send its subjects into the unoccupied territory of another State, to establish themselves there, and then, after a long time has elapsed, to assert that their entry was made by its direction and under a claim of right on its part which no one ever heard of before. The holding can only be computed from the time when the State makes the open claim. What may have been done before that time goes for naught.

Nor is it enough that the act shall be in its inception an act of the intruding sovereign and made under a claim of right on his part. It must continue to be the act of the sovereign. The community so formed in the territory of another by which public title is attempted to be created must be controlled and governed by the State which claims the benefit of the intrusion. It must be not only a public act of the intruding State in the beginning, but it must continue to be such a public act. It can only keep this character as long as the intruding sovereign maintains political control over the territory thus occupied. Political control, therefore, is an indispensable accompaniment of all adverse holding by which public title is to be created.

The political control, moreover, must be a political control over the territory to which the claim extends. It is not sufficient that it should be merely the control of subjects as subjects who happen to be in the territory. It must be a territorial control; or, in other words, a control of all persons within the territory. A control of, or jurisdiction over, the persons merely

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of subjects, as subjects, even within the territory, is a personal control or jurisdiction. It is not a territorial control. Nothing less than a territorial control is sufficient to establish this form of title.

The term "adverse holding" is a term familiar to English jurisprudence, and its application is subject to well-defined principles. As used in Rule (*a*), it has, in addition, certain express qualifications, to be found in the text of the Rule itself. These qualifications do not affect the general principles above referred to, which are inherent in the meaning of the term. They operate as specific restrictions or definitions in the application, in the present proceeding, of the term as generally understood.

In this proceeding, as already stated, the question involved is not one of private title, or ownership of the fee, but of public title, or dominion over the territory. It is chiefly on account of this distinction that the necessity arises for the express qualifications of the term "adverse holding" in the Treaty.

These express qualifications relate to two facts; FIRST, *The Period of Duration of the holding or possession;* SECOND, *Its Character.*

First; In the case where individual title to land is created by adverse holding, the period of duration of the holding necessary to make title is prescribed by the municipal law of the State within whose territory the land lies, either by statute or otherwise. There being no fixed rule prescribing such a period in international law, which regulates international controversies, it became necessary to assume a period which should have the effect of creating title, and this period was fixed by agreement in the Treaty, for the purposes of this arbitration, at fifty years.

Second; The possession of an adverse holder, where the question involved is one of public title, must be evidenced by actual settlement.

In the case of an individual claiming under an adverse possession, possession must be evidenced by actual occupation. As the

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claim of the adverse holder is a claim to disseize him who has the possession, the burden is upon him to establish an occupation which amounts to an actual ouster. The mere performance of acts which are no indication of ownership and which are done on sufferance is not an ouster and does not constitute adverse possession.

With stronger reason does the same principle hold in the case of States. The burden here is upon the intruding State to show possession by positive and actual occupation of the soil itself. This can only be accomplished by settlement.

This principle is recognized in terms by Rule (*a*) of the Treaty, which says that "the Arbitrators *may* deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding." The meaning of this paragraph is clear. It is that actual settlement of a district is a necessary condition to constitute adverse holding; but it states that, apart from the rule of law and for the purposes of this investigation, the Tribunal may, in its discretion, take into consideration another condition as well as the legal one of actual settlement.

In so far as actual settlement is concerned, therefore, the Treaty is affirmative of the general rule of law. It is to be noted, however, that in defining what shall constitute the test of adverse holding by States—what, in other words, shall correspond to possession in the case of adverse holding by individuals—the Treaty has employed not loose and general phrases, but phrases that are emphatic, well defined and specific. It is not mere possession that will be sufficient, it is not even mere use and enjoyment, but settlement, a thing very different from possession or from use and enjoyment. Nor is it mere settlement that is required; it must be actual settlement, and actual settlement of a district. It would be difficult to find language more precise and exact. Each and all of these terms is to be given full force and effect in determining the merits of any claim of adverse holding.

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Even in the case of individual proprietors, acts are often allowed upon the land which the proprietor does not choose to consider a trespass. Much more is this the case with reference to individual strangers in the territory of a State. In most countries, even those which are most completely settled and organized, foreigners are allowed to go and come at will. So long as they keep the peace and do not violate the law, they are not molested in any way; they travel, they hunt, they fish, they pursue their runaway cattle over the border, they trade, in many States they even buy land and build houses, till the soil, and use its natural products, or they may settle as mere squatters, without being disturbed or proceeded against by the State. If this is true of countries that are settled, much more is it true of countries where, although held under a perfect and undisputed title, no settlements have yet been made. The fact that individuals are suffered to do these acts, that they are tacitly allowed this use and enjoyment of the territory, indicates no such territorial possession as to make them adverse holders, as the subjects of a foreign State. Not only this, but a foreign State may itself, through its agents, do many of these acts within the territory of another State, as the acts themselves involve no claim of sovereignty, as well as private individuals, and no significance can be attached to the fact that they perform such acts. A Government may engage in trade, in which case its property so engaged in trade in a foreign country comes under the same rules as that of private individuals (The *Charkieh*, L. R. IV, Adm. & Ecc. 59, 1873). Or it may delegate a certain portion of governmental authority to a private trading corporation which may engage in trade in a foreign country. The acts of such a trading corporation which it performs on sufferance in the territory of another do not constitute possession in any sense, nor can it claim an adverse holding by reason of such acts.

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2. SETTLEMENT, AS BASIS FOR ADVERSE HOLDING.

Such possession, under the general rules of law, can only be evidenced by settlement, accompanied by the exercise on the part of the sovereign claiming to hold adversely, of political control under a claim of right, and this principle is recognized by the Treaty.

The *first* question to be considered is what is meant by "settlement."

First; "Settlement" implies *fixity of abode.* It implies the creation of dwellings. Mere transit over a territory will not create it. Travelling, exploring, voyaging with whatever object, whether for hunting or for any other purpose, is not settlement. Trading in the heart of a country, however extensive or however regularly pursued, is not settlement. Still less is trading by water. The casual use and enjoyment of natural products is not settlement. The pursuit of runaway slaves or of cattle is not settlement. None of these acts, even though by their frequency they may develop into habitual practices, has any bearing upon the question of settlement. The only act that can constitute settlement is the establishment of fixed abodes.

Secondly; the idea of settlement involves the establishment of abodes by persons in more or less considerable numbers. It means at least *the nucleus of a permanent population;* persons whose homes and occupations are at that point, and who form what may have some claim at least to being called a community.

A whaling ship voyaging to the Pacific leaves one of its crew on the Galapagos Islands, where he remains for a year or two before another ship takes him off. The whaler does not constitute a settlement.

John Sutton goes to live for a few months on the shell-bank at Waini, where he trades with the Indians (B. C., VI, p. 128). Sutton does not constitute a settlement.

The boy William Kendal, a servant of Father Cullen, at the Santa Rosa Mission, runs away and lives for a dozen years with

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the Indians on the Auka, and marries a daughter of one of the head men, and is discovered there, after this long absence, by some one who chances to pass that way (B. C., VII, p. 238). But Kendal does not constitute a settlement.

"A Dutchman had been eight years domiciled in the River Aguirre," and this fact is thought worthy of being stated in the British Case (p. 48), although the Aguirre is undisputed Venezuelan territory, which even the wildest claims either of Great Britain or the Netherlands have never called in question. But the fact of the Dutchman being so domiciled does not constitute the Aguirre a Dutch settlement.

Thirdly; settlement implies, necessarily, the *establishment of homes* by inhabitants—dwellers. The designation of a trading agent to remain at some point for purposes of traffic in an unsettled part of a neighbor's territory does not constitute settlement, though he builds a cabin and occupies it and derives his sustenance from the cultivation of the soil. The Dutch post in Cuyuni, the only post which they ever established in the disputed territory west of Moruca, had, therefore, no elements of a settlement.

Still less does the mere erection of a building for shelter, to be occupied from time to time by such an agent, or by traders or hunters generally, as occasion may arise, fulfil the requirements of this term. Thus, the shelter which Beekman erected in Barima, even if it had been used, which the evidence fails to show, would have had no claim to be called a settlement.

In support of this proposition we quote from the British Counter-Case (p. 44), the language of Queen Elizabeth, in reply to the complaint of the Spanish Ambassador respecting the expedition of Sir Francis Drake, in 1580:

"Besides Her Majesty does not understand why her subjects and those of other Princes are prohibited from the Indies, which she could not persuade herself are the rightful property of Spain by donation of the Pope of Rome, in whom she acknowledged no prerogative in matters of this

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kind, much less authority to bind Princes who owe him no obedience, or to make that New World as it were a fief for the Spaniard and clothe him with possession: and that only on the ground that Spaniards have touched here and there, have erected shelters, have given names to a river or promontory; acts which cannot confer property."

A trading agent's cabin, whether temporary or permanent, may be dignified by the name of a "post," and its occupant may be called a "*Postholder*," although, as a matter of fact, the Dutch called him merely an "*Outlier*." But whatever else such post may be called, it cannot be called a settlement. A settlement may grow up in the neighborhood of such a post, by the building of dwellings and their occupation by those who till the soil, or gather its products, or conduct trading or other enterprises from that point. But the post by itself is not a settlement.

Fourthly; a settlement, as already stated, to be the basis of adverse holding, *must be subject to the political control of the sovereign who claims as an adverse holder*. If the settlement is detached from such control, if there is nothing to show that his laws and his government extend over it, and extend over it as a portion of his territory, so that they apply to all persons within the limits of the settlement, whether subjects or foreigners, it is not a settlement within the meaning of the law governing adverse holding.

Much more strongly does this restriction upon settlement as a foundation for adverse holding apply in a case where the State claiming as an adverse holder not only fails to assume the government of the settlement, but expressly disavows it. Thus, when the Colonial authorities of Essequibo, in 1766, on account of the disturbances which Dutchmen from Surinam had created in Barima, forbade colonists to settle there, it precluded itself from any advantage which it might otherwise have acquired. Under its own law, the act of its subjects was illegal, and while the law remained in force the Dutch sovereign could not derive any dominion from the act.

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Similarly, in 1850, when Great Britain entered into an agreement with Venezuela not to occupy the territory in dispute, it became illegal for British subjects to settle in the territory. So long as that agreement remained in force, Great Britain could not take advantage of such a settlement as an adverse holder, because by her own treaty she had expressly prohibited and rendered illegal such an act.

Fifthly; The settlement must be actual. In the case of individuals, the phrase "actual possession" is used in opposition to "constructive possession." Thus, while one who holds adversely, under documentary title defining his holding by metes and bounds, is only in actual occupation of a part of the land covered by his deed, he is held to be constructively in occupation of the whole.

In the case of States, "actual settlement" is used in contradistinction to "constructive settlement," that is to say, the constructive extension of the settlement beyond the localities of actual settlement. The object of the Treaty in using the word "actual" is to exclude, once and for all, all loose and vague claims to extend the effect of such adverse holding beyond the localities actually settled. No constructive extension of the term, such as is recognized in the case of individual possession can be admitted. In order that a district may be claimed, the district must be actually settled. A settlement at the mouth or on the lower banks of a river cannot be extended constructively to include the headwaters of the river or its upper banks. It is not an actual settlement of that district. No claim of adverse holding can be allowed as to any locality unless it is shown, to the satisfaction of the Arbitrators, that actual settlement was made at that locality.

To sum up; in order to fulfil the effective conditions of adverse holding under the head of settlement, as to any particular locality, it is necessary that inhabitants in greater or less numbers should have adopted that locality as a fixed place of abode, and should have established there, their homes and occupations with a certain degree of permanence; that they should be under a recognized

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and actual political control; and, finally, no such claim can be established beyond the area of actual settlement. To make a good title under the Treaty, adverse holding must be peaceable and not by force. No holding by force, against the protest of the State whose territory has been seized, will ever ripen into a title by prescription. As between individuals the bringing of an action arrests the running of the statute. There is no tribunal to which an injured State can appeal to recover the territory of which it has been deprived by force. Its maintained protest has the same effect to arrest the maturing of the title by prescription as the bringing of an action by an individual.

3. Exclusive Political Control.

We have seen that, both by the Treaty and by the general principles of law, the essential test of adverse holding, in the case of States, is actual settlement; that the settlement must be a national act, and that it must be under the national control. Without such control settlement cannot lay the foundation of adverse holding. It remains to consider how and how far, under the Treaty, political control of itself may operate to establish a claim of adverse holding without settlement.

Here a broad distinction is taken by the terms of the Treaty. While the reference to actual settlement is mandatory, the reference to political control apart from settlement is merely permissive. The language of the Rule is:

> "The Arbitrators *may* deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding."

The obvious force of this distinction between settlement and political control as tests of the effectiveness of an adverse holding to create a title is that, while the Arbitrators are to be concluded by the fact of actual settlement, they are not necessarily to be concluded by the fact of political control, unaccompanied by settlement. They are to examine the attendant circumstances and conditions surrounding such control, if they find it, and

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are to accord to the claim such weight as they may deem just, having in consideration all these circumstances and conditions. Exclusive political control is by no means a final test. It may be found to exist, but it does not on that account necessarily lay the foundation of title. If, for example, such control rests on the exercise of force, in the face of the protest of a weaker Power holding the prior title, it could have, and should have, but little significance in determining the question of adverse holding. All the circumstances surrounding the claim are to be considered and weighed by the Arbitrators, and it is only to have the effect and significance to which it is entitled by a just and equitable consideration of all the facts of the case. To entitle it, however, to be considered at all by the Arbitrators, it must, in the terms of the Treaty, be "exclusive political control of a district."

The language referring to control is not loose and inexact any more than the language referring to settlement. It is not mere influence, or alliance, or superiority, or leadership, that is required, but control—a very different thing from all the others. Nor is it mere control. It must be political control; and more than that, it must be exclusive political control, and exclusive political control of a district. Only if it fulfils all these requirements can it be the subject of consideration by the Tribunal at all; and if it fulfils these requirements, it is then for the Arbitrators to determine how far they will consider it.

It is necessary to define at the outset the terms which constitute this remarkably precise and exact phrase of the Treaty.

"*Political control*" means the exercise of sovereignty over a territory, through political or governmental administration.

"*Political control of a district*" means the actual exercise of sovereignty over that district, through political or governmental administration.

"*Exclusive political control of a district*" means such an exercise of sovereignty over that district to the exclusion of all other sovereignty.

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First; Political control must be in the exercise of sovereignty. The question which is being here considered is the question how far an adverse holding based upon political control may operate to the extinguishment of a prior title and the ousting of its holder. The title in question, as has been repeatedly suggested, is not the private title of an individual who owns the fee, but the public title of the State to the territory of which it is sovereign. The claim of adverse holding presupposes the existence of a prior title, and in the present case a prior public title of the sovereign existing in all its completeness. The question is what form of political control shall be sufficient to create a title adversely to this previously existing title of the sovereign.

Obviously, the first consideration is that the political control which is to constitute such an adverse holding must be a control that is maintained in the exercise of a like relation, namely, the relation of sovereignty. In this manner of creating a title adversely, nothing less than acts which are both in intention and in the nature of the acts themselves acts of sovereignty can displace a previously existing sovereignty. It is against the title of a sovereign, formally asserted and maintained, that the claim of adverse holding is now sought to be enforced. Clearly, no acts can lay the foundation of an effective holding unless made in pursuance of an equally definite assertion of sovereignty. A claim of sovereignty, therefore, made openly and notoriously, is the first requisite to fulfil the necessary conditions.

Secondly; the acts themselves *must be such as necessarily imply* sovereignty and, what is more, *territorial sovereignty.* As has been already pointed out, individual foreigners are allowed, according to the customs of most countries, a large latitude of action in the country in which they may for any purpose sojourn. The fact that such foreign individuals are also agents of a foreign government does not cut them off from the liberty of action which is allowed to foreigners generally. The doing of an act in another's territory by such an agent, even an act which may be in

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the execution of some official function or duty, carries with it no necessary implication of sovereignty. The fact that in doing an act, which a private individual would equally be allowed to do, he is performing an official duty does not alter the character of the act as an act habitually permitted by the territorial sovereign to be done. The latter does not view the official person sojourning upon his domain in any other light than that in which he views all other sojourners. Such a sojourner may be acting officially with respect to his own Government, but he is not acting officially with respect to the Government of the territory. Consequently, no implication can be drawn from his acts.

The facts above stated are important, because it is precisely of acts of the character described that the British Case on political control is made up. As a matter of fact, there was no such thing as political control exercised by the Dutch in the territory in dispute. Individual Dutchmen were, however, allowed a considerable liberty of movement by the Spanish authorities, and whether these individual Dutchmen were merely private traders or were the officials or employees of the Dutch West India Company made no difference to the King of Spain.

These facts were all the more striking in this particular case by reason of the peculiar character of the Dutch West India Company as a company at the same time engaged in mercantile trading and in the government or management of a trading colony. A trading company clothed, as was this corporation, on the one hand, with certain delegated powers of government to run a colony and, on the other, occupied with the question of trade and trade profits as a private corporation, stands in a peculiar condition. It is in great danger of mixing up its two functions. It may, for instance, have a certain territorial scope for its trade, which of course does not imply sovereignty in any sense. It may thus extend its trade on its neighbor's territory. It also regulates the trade of its colonists, who are quasi-subjects; and it regulates their trade not only in the colony, but out of the colony,

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and particularly it regulates their competition outside of the colony with its own trade outside. It uses its powers of government to back up its functions of trade. The consequence is that it exercises a personal jurisdiction over its subjects on foreign territory in connection with matters of trade more extensive than that which Governments ordinarily attempt to exercise. Having begun with matters of trade, it extends this regulation and jurisdiction to other matters, and it is all the more ready to do this in that the colonial character of its enterprise gives it large powers and supervision over the persons and occupations of its colonists.

Thus, the West India Company, through the Colonial authorities, was in the habit of sending its employees, who were chiefly old negro slaves, to trade in the neighboring wilderness with the Indians. It also had Dutch employees who did the same business. These employees were likewise sometimes used to pursue and capture runaway slaves, as they would cattle, upon foreign territory and to bring them back.

There was also a class of employees, a degree higher in the official scale than the roving traders or outrunners. These were called *Outliers*, a name which is generally translated in the evidence, *Postholders*. An *outlier* was sent to a certain point to look after the trade at that point, to give information of the movements of runaways and capture them if possible, and to keep the Colonial authorities informed generally of what was going on.

There is really only one case, that of the post in Cuyuni, which has any material bearing upon the boundary dispute, and nothing in the nature of sovereignty could be attributed to the Outlier who was stationed there.

The Colonial authorities also maintained close supervision over the colonists. Regulations and laws were made which the colonists were obliged to observe, not only in the colony itself, but when they went into the adjoining territory of Spain. This personal jurisdiction over the Dutch colonists was not an exercise of sovereignty over the territory in question, because it related

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solely to Dutch subjects and followed them wherever they went. There is not an instance in this whole controversy of the exercise, or attempted exercise, west of Moruca, of any control over anybody but Dutchmen.

Thirdly; Political control requires that there should be *an* actual *exercise of sovereignty through the medium of government.*

While it may not be necessary that the government should be of an elaborate or highly organized type, sovereignty must actually be exercised through governmental agents. This does not mean that they must necessarily be the ordinary civil agents of government. Political control may be exercised by military as well as by civil agents, but sovereignty must be actually exercised by agents, and these agents must be governmental agents. Unless government officers are actually and effectively controlling a district there is no political control of that district within the meaning of this rule of the Treaty.

The definition given above requires that the control be exercised over the territory as territory, and upon all persons within it, whether subjects or foreigners. The control which is exercised only over subjects sojourning within a given territory is not political control over that territory. It is merely a personal control over subjects irrespective of territorial control. If it appears as to this territory in dispute, that one Power exercised control over all persons within the territory, and that the other did not, the first alone exercised political control over the territory. The performance of acts connected with trade in the territory has of itself no significance, because it is no indication of political control; but the exclusion of persons, and especially of persons other than subjects, from the performance of such acts of trade is an indication of political control. It is not necessary in order to political control that this right of exclusion shall be exercised at all times and in all places any more than it is necessary in order to assert political control over the territory of any civilized State that the Government should exclude foreigners or

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refuse to allow them to trade there. But if it does exclude them, and they assent to the exclusion, it is an assertion on the one part and an admission on the other of territorial sovereignty and political control in the Government that exercises the right of exclusion.

Of course in an unsettled territory there will be far less to indicate political control than in a settled territory. But that cannot affect the question of title. If political control is to be proved in such a territory, the acts which indicate it will doubtless be less numerous and less extensive than in fully organized districts containing a settled population. The tests of political control in such a district are the actual exercise of a right to exclude foreigners therefrom, and to control the actions of foreigners as well as subjects therein. The apprehension of foreigners for violations of governmental regulations in such territory is an act of great significance. On the other hand, the fact that a sovereign issues regulations as to acts of his own subjects in a territory does not constitute an exercise of political control therein, especially when he has no governmental agencies to enforce such regulations, and when, as a matter of fact, such regulations are not enforced by him.

The enforcing of governmental regulations in an unsettled territory is not necessarily in the hands of civil officers. It is enough that it is in the hands of governmental officers. The distinction between the military police and civil police does not by any means universally exist even in civilized countries, and in wild and unsettled colonies it is almost wholly obliterated. The exercise of control may therefore be in the hands of military officers, coast guard officers and the like, as well as in the hands of civil police. They are agents of the government charged with the duty of enforcing the regulations of the government, and they have the ability to enforce them and do, in fact, enforce them.

The question further arises in a country in the unsettled parts of America as to whether control is exercised over the Indians, and in what such control consists.

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The territory in question, during the greater part of its history, while Spain asserted over it the rights of a sovereign and while it was the resort of Spaniards in great numbers for the purpose of trading with the Indians, gold seeking, hunting and other purposes, was in large part unsettled. A considerable part of the forests which covered it was traversed at will by roving tribes of Indians, who, like many others of their race, had no regular abode. They were the natives of the soil, the aborigines who, under the principles which have universally governed the relations of the civilized settler and the native American, remained in the territory on sufferance without political rights and with only such liberty of action and movement as the dominant race saw fit to allow.

Whatever may be assumed to be the meaning of the Treaty as to exclusive political control over a district, certainly the relations of the Government setting up a claim of such control over these roving bands of Indians could have no bearing upon the question. The claim is made in the British Case and dwelt on at considerable length that, from time to time, the colonists of Essequibo entered into various agreements with some of these tribes and exercised some influence over their predatory occupations and over the choice of their chiefs; but such interference and influence, could not, from the nature of things, constitute a political control. In the first place, the tribes were wandering inhabitants of the forest, and could not be said to belong to any particular district. In the second place, the tribes of Indians had not, and could not have, any political status. Still less could they have any international status. International law deals only with civilized States and their relations, and a question of disputed sovereignty arising between two such States can be in nowise affected by the attitude which some particular band of Indians, from considerations of fear, convenience, or temporary interest, may assume towards some particular colonists. The natives certainly had no political control over a district them-

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selves. Still less could the acquisition of influence over them be construed as transmitting through them a political control, which they did not, and could not, themselves possess. Influence over and alliance with the Indians does not amount to political control.

Fourthly; In order to create adverse holding of a district, the political control must be exercised over the district. As with the question of settlement, so with the question of political control; whatever may be its significance, it can only extend over the territory where it is actually exercised. No control exercised only within a part of a district can be extended constructively over the whole district. The establishment even of complete forms of government, fully equipped with all governmental machinery, at one point, although constituting the exercise of political control at that point, cannot be construed to extend any further than the limits of the control actually exercised. No claim of adverse holding at any locality, based on political control, can be allowed, unless the Arbitrators are satisfied that political control was exercised throughout the locality. It follows that, under the Treaty, no claims can be sustained on the ground of the exercise of political control to territories of vague and ill-defined boundaries, where there is no area that can be ascertained specifically over which the political control is exercised.

Fifthly; Political control must be exclusive. In order to have significance in this proceeding, as the equivalent of adverse holding, political control, or the exercise of sovereignty through political or governmental administration, must be to the exclusion, during the entire period, of all other sovereignty or control. No acts or classes of acts which are equally performed in the territory in question by both parties can have any bearing upon the claim of adverse holding. The exercise of control in the locality, during the period, by the party holding the anterior title puts an end to the claim as to that locality.

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The above principles apply equally to prescription. Prescription is that operation of law by which title is established: (1) by lapse of time, where the title, although its origin is unknown, has been held so long that the memory of man runneth not to the contrary, or, in other words, where the foundation of the title is lost in the mists of antiquity; (2) where, by lapse of time, a wrongful possession comes to have the force of a rightful title.

The first meaning obviously has no application here. In the second meaning, "prescription" is synonymous with "adverse holding," and is governed by the same rules.

RULE (b)

The effect to be given to general principles of international law in the determination of the true boundary line is thus stated in Rule (*b*) of the Treaty:

"The Arbitrators may recognize and give effect to rights and claims resting on any other ground whatever valid according to international law, and on any principles of international law which the Arbitrators may deem to be applicable to the case, and which are not in contravention of the foregoing rule." [Rule *a*].

The only class of rights and claims referred to in the present controversy are the territorial rights and claims of the parties to this Treaty, in so far as they affect the primary question which the Arbitrators are directed by the Treaty to decide. The Arbitrators are to recognize and give effect to all such territorial rights and claims resting on:

(*a*); any ground whatever valid according to international law, and

(*b*); any principles of international law which the Arbitrators may deem to be applicable to the case, and which are not in contravention of Rule (*a*).

As the Treaty at the outset prescribes the date as of which the extent of the territories of the respective parties is to be determined, the clause now under consideration must be read in con-

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nection with that statement. As in the case of Rule (*a*), it is only as determining the question of the boundary of 1814 that these territorial rights and claims are to be considered, for it is clearly not the intention of the Treaty that the three subsidiary Rules should extend the limits of the subject matter of the controversy beyond the date fixed by Article III, except in so far as said Rules direct the consideration of a different date.

Under Rule (*b*), the Tribunal is directed to recognize as valid any title which is valid under the rules of international law, except in so far as Rule (*a*) may establish a different principle.

The only claim of title which has so far been specifically referred to by the Treaty is title under an adverse holding, which can never be an original title. Rule (*b*) admits the proof of original titles, and directs the Tribunal to consider any claim of title, including, of course, such original titles as they may deem valid under international law and not in contravention of Rule (*a*). It also introduces such rules of international law as may be used to define the terms "adverse holding" or "prescription."

The original title under which the whole territory in dispute is claimed by Venezuela is the title by which the whole of Guiana from the Orinoco to the Amazon was originally held by Spain. Under the principles of international law, discovery accompanied by intention to acquire possession creates an inchoate title. Where this inchoate title is followed by occupation, consisting of acts of military or political control, explorations, surveys, establishment of trading posts, grants of land to subjects, charters and othet acts indicative of possession or control, the title by discovery becomes complete. The original title of Spain, which Venezuela as a party to this controversy now sets up, is a title by a perfected discovery, and the principles of law governing the establishment of such a title are to be applied in the present case.

The original title of the Dutch, on the other hand, to the "Establishment of Essequibo" is a title based upon conquest from Spain and the cession of the territory by Spain to the

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Netherlands under the Treaty of Munster; and the validity of such titles and the extent to which they are to be established are matters to be determined by the Arbitrators who, in making their determination, are to be governed by the principles of international law that may be applicable to the case. The only express proviso which is attached to the application of these principles is that they shall not be in contravention of Rule (*a*). Where a title is sought to be established as against an original title, on the basis of adverse holding, no claim can be considered unless its duration is for the period of fifty years, and unless it fulfils in other respects the requirements of that Rule and of the general rules of international law.

RULE (c)

The adjustment of the relations between the territorial sovereign and subjects of the other party who may be found in occupation of the territory of such sovereign is covered by Rule (*c*) of the Treaty, which is as follows:

"In determining the boundary-line, if territory of one party be found by the Tribunal to have been at the date of this Treaty in the occupation of the subjects or citizens of the other party, such effect shall be given to such occupation as reason, justice, the principles of international law, and the equities of the case shall, in the opinion of the Tribunal, require."

This Rule recognizes the fact that when the territories of each party shall have been ascertained by the defining of the true boundary line, it might be found that the subjects or citizens of one party were at the date of the treaty actually settled upon territory thus ascertained to belong to the other. The question would then arise how, with the greatest fairness both to the State in whose territory such settlers were found and to the settlers themselves, an adjustment should be made of the relations between the two; and it was accordingly provided in the Treaty that the Tribunal should itself finally adjust these relations, upon considerations of reason, justice, the principles of international law and the equities of the particular case.

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It is not stated by the Treaty what form of adjustment, if any, is to be adopted by the Arbitrators in carrying out the provisions of Rule (*c*). The whole matter is left to their judgment and discretion. It is clearly contemplated by the Rule that some provision shall be made to settle the relations of both parties, but that, as far as the status of the territory upon which such cases arise is concerned, the territory having once been fixed by the determination of the boundary line, the existence of such cases as are referred to in Rule (*c*) cannot cause any modification of the line. The case only arises, in fact, where the subjects or citizens of one State are found in the territory of the other, as determined by the fixing of the boundary line, and the language of the Rule in itself negatives the idea that the fact of their settlement there shall alter the political status of the territory.

That this is the correct interpretation of the Rule is confirmed by the provisions of Rule (*a*). Under Rule (*a*), it is provided that adverse holding shall only be established by settlement or exclusive political control for fifty years. If it were the intention of Rule (*c*) that the occupation therein referred to should have the effect of deflecting the boundary line, then Rule (*a*) would become meaningless, and the possession of fifty years would be no better than the possession of yesterday. Such a construction of the Treaty would virtually read the fifty-year provision entirely out of it. It would, in substance have the effect of saying that where the subjects or citizens of one party were found in the territory of the other party that fact of itself should put an end to its status as the territory of such other party—a conclusion which is obviously untenable.

That such is the meaning of the Rule is further confirmed by the negotiations which led up to it. The proposition was originally made by Lord Salisbury that while the line was to be determined by the Commission as of the date of 1814, no territory should be included as Venezuelan which was found in the occupa-

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tion of British subjects on January 1, 1887. The exact language of his proviso is as follows:

"Provided, always, that in fixing such line the tribunal shall not have the power to include as the territory of Venezuela any territory which was *bona fide* occupied by subjects of Great Britain on the first of January, 1887." (V. C., vol. iii, p. 305.)

This proposition was rejected, Venezuela refusing to agree that the line of 1814, having once been ascertained, should be modified by the mere fact of occupation of what was shown thereby to be Venezuelan territory by British settlers in 1887.

The grounds of the objection to Lord Salisbury's proposition are thus stated by Mr. Olney, who was conducting the negotiation:

"The decisive objection to the proposals is that it appears to be a fundamental condition that the boundary line, decided to be the true one by the arbitrators, shall not operate upon territory bona fide occupied by a British subject January 1, 1887—shall be deflected in every such case so as to make such territory part of British Guiana. It is true that the same rule is to apply in the case of territory bona fide occupied by a Venezuelan January 1, 1887. But, as Great Britain asks for the rule and Venezuela opposes it, the inevitable deduction coincides with the undisputed fact—namely, that the former's interest is believed to be promoted by the rule, while the latter's will be prejudiced.

"The true question, therefore, is, is the rule just in itself—without reference to its actual working—so that Great Britain has a right to impose her will upon Venezuela in the matter? How this question can be answered in the affirmative it is most difficult to perceive, and is not even attempted to be shown by the despatch itself. It is a rule which is certainly without support in any principle of international law, or in any recognized international usage." (V. C., vol. iii, p. 307.)

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"Venezuela is not to be stripped of her rightful possessions because the British Government has erroneously encouraged its subjects to believe that such possessions were British." (*ib.*, p. 308.)

* * * * * *

"The proviso by which the boundary line as drawn by the arbitral tribunal of three is not to include territory bona fide occupied by British subjects or Venezuelan citizens on the 1st of January, 1887, should be stricken out altogether, or there might be substituted for it the following:

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Provided, however, that, in fixing such line, if territory of one party be found in the occupation of the subjects or citizens of the other party, such weight and effect shall be given to such occupation as reason, justice, the rules of international law, and the equities of the particular case may appear to require." (*ib.*, p. 309.)

The contention of Mr. Olney that the proposal of Lord Salisbury was unjust to Venezuela, in that it provided that where territory was *bona fide* occupied by subjects of Great Britain, "the boundary line shall be deflected in every such case so as to make such territory part of British Guiana," prevailed, and the present rule was inserted, which provided for the claims not only of British occupants in 1887, but the claims of British occupants down to the date of the Treaty. Instead, however, of a provision that such occupancy should deprive Venezuela of territory which might be ascertained to be hers by the line of 1814, the provision in the Treaty laid down that the Tribunal should itself adjust the relations between these British occupants and the Venezuelan Government on considerations of reason, justice, the principles of international law, and the equities of the case.

Assuming that the facts will disclose cases in which British subjects have settled on what is found to be Venezuelan territory, the question arises as to what adjustment shall be made of their relations with the Venezuelan Government. If such settlers are mere squatters, holding under no grant, their cases require no consideration. They would not be entitled to recognition even by Great Britain, much less would there be any obligation upon Venezuela to recognize them. If, however, such occupants hold under grants from the British Crown, it would seem that such grants would become invalid as being void *ab initio*, unless confirmed by Venezuela. What is to be the validity of such grants, and whether they are void or voidable, or whether Venezuela shall be required to confirm them, or whether they shall be deemed to have been so confirmed by virtue of a provision in the arbitral decision itself, are questions for the Tribunal to determine.

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The evidence annexed to the British Case and Counter-Case, covering the history of British administration, while it fails to state with particularity the number, location or character of temporary or other grants in the disputed territory at the date of the Treaty, gives certain general indications in reference to the history of settlement since the acquisition of the colony by Great Britain.

Down to 1850 there was no occupation of the disputed territory by British settlers, either with or without a grant, on the coast, west of the Moruca or in the interior above the first falls of the Cuyuni.

In 1850 an agreement was entered into by the two parties that neither should occupy or encroach upon the territory in dispute; and no territorial benefits can certainly be derived by Great Britain from any occupation which took place while that agreement was in force. Neither can reason, justice, the principles of international law, or the equities of the case, require that Venezuela should assume any obligations in reference to the compensation either of the British Government or of British subjects for the revocation or invalidation of grants made by the British Government during that period.

The construction correctly put upon this agreement by Great Britain is shown by the text of the proclamation issued January 30, 1867, by the Colonial authorities of British Guiana, as follows:

"Whereas in the year 1850 a mutual engagement was entered into by the Government of Great Britain and that of Venezuela, to the effect that neither Government would occupy or encroach upon certain tracts of country theretofore in dispute, lying between the boundary of British Guiana, as claimed by Great Britain, and the boundary of Venezuelan Guiana, as claimed by Venezuela;

"And whereas a company has been lately formed assuming the name of British Guiana Gold Company, for the purpose of seeking for gold and working any deposits thereof to be found within the tracts aforesaid, and it is understood that British subjects are employed by the said company within the said tracts: Now, this is to inform those British subjects and all

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others concerned, and they are hereby required to take notice, that Her Majesty's Government can not undertake to afford protection to British subjects so employed in these tracts as aforesaid, and that all such British subjects can only be recognized as a community of British adventurers, acting on their own responsibility and at their own peril and cost." (V. C., vol. iii, pp. 148-149.)

The Agreement of 1850 has never been abrogated or repudiated and was appealed to by Great Britain as late as January, 1887, in the letter of the Earl of Iddesleigh of that date to Mr. St. John, the British Minister at Caracas. By this express admission it was in force at that date, and no action taken since that date has disturbed it.

Apart, however, from the question whether the Agreement of 1850 was in force subsequent to 1887, and even assuming that it was not, the British Government has, by its own action, put the holders of grants upon notice that such grants were taken under an uncertain tenure.

In June, 1887, the Governor of British Guiana, by express instruction from the Home Government, addressed the Court of Policy in the following terms:

"Before we proceed to the order of the day, I am anxious to make statement with reference to the question of the boundary between this colony and the Republic of Venezuela. Among the applications which have been received for mining licenses and concessions, under the mining regulations passed under ordinance 16 of 1880, 16 of 1886, and 4 of 1887, there are many which apply to lands which are within the territory in dispute between Her Majesty's Government and the Venezuelan Republic. I have received instructions of the secretary of state to caution expressly all persons interested in such licenses or concessions, or otherwise acquiring an interest in the disputed territory, that all licenses, concessions, or grants applying to any portion of such disputed territory will be issued and must be accepted subject to the possibility that, in the event of a settlement of the present disputed boundary line, the land to which such licenses, concessions, or grants apply may become a part of the Venezuelan territory; in which case no claim to compensation from the colony or from Her Majesty's Government can be recognized; but Her Majesty's Government

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would, of course, do whatever may be right and practicable to secure from the Government of Venezuela a recognition and confirmation of licenses, etc., now issued." (V. C., vol. iii, pp. 307–308.).

This wise precaution was doubtless taken in view of the fact that the Agreement of 1850 was still in force; but whether it was so or not, the effect of the caution was to put all grantees upon notice that their grants might be defeated by the determination of the boundary question, and no person holding under such a grant can claim any indemnity if that which he was notified might happen did happen, namely, the determination of the territorial sovereignty of the territory where the grant lay against Great Britain. It will be noticed that there is here no suggestion that the boundary line was to be deflected to, or include, such settlements.

Even if such a reservation had not been made by Great Britain, however, the failure to make it, in view of the circumstances of the case, would not be a matter for which Venezuela was responsible. In fact, a short time later, that is to say, on September 5, 1887, the caution previously given was withdrawn by Great Britain, and on that date, the Secretary of State for the Colonies wrote to the Governor of British Guiana:

"Her Majesty's Government have decided that mining concessions and grants of land may be made by the Government of British Guiana within the line referred to in the *Gazette* notice of 21st October last as the boundary of the territory claimed by Great Britain" [the Schomburgk line], "without any reservation, and on the understanding that, should negociations with Venezuela be renewed, no territory within that line (subject to somepossible modification for the purpose of giving to Venezuela the command of the mouths of the Orinoco) will be conceded to that Republic." (B. C.-C., App., p. 312.)

It thus appears that Great Britain first put all her subjects upon notice and then distinctly withdrew and contradicted the notice, and gave them an affirmative assurance that their titles would be defended, even if it should be found that they were in territory that might be rightfully claimed by Venezuela. As to

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the responsibilities towards its own grantees in which this extraordinary action of the Government involved it, we have nothing to say except to call attention to the fact that the responsibilities thus assumed were far more onerous and emphatic than would have been the case had the Governor of British Guiana not made his reservation of the previous June, only to be followed by a positive contradiction in September.

Wherein lies the responsibility of Venezuela with reference to these grantees, under the circumstances here related? As Secretary Olney says, in his letter to Sir Julian Pauncefote, of June 12, 1896:

"Suppose it to be true that there are British subjects who—to quote the despatch—'have settled in territory which they had every ground for believing to be British,' the grounds for such belief were not derived from Venezuela. They emanated solely from the British Government; and if British subjects have been deceived by the assurances of their Government, it is a matter wholly between them and their own Government and in no way concerns Venezuela. . . . In but one possible contingency could any claim of that sort by Great Britain have even a semblance of plausibility. If Great Britain's assertion of jurisdiction, on the faith of which her subjects made settlements in territory subsequently ascertained to be Venezuelan, could be shown to have been in any way assented to or acquiesced in by Venezuela, the latter Power might be held to be concluded and to be estopped from setting up any title to such settlements. But the notorious facts of the case are all the other way. Venezuela's claims and her protests against alleged British usurpation have been constant and emphatic, and have been enforced by all the means practicable for a weak power to employ in its dealings with a strong one, even to the rupture of diplomatic relations." (V. C., vol. iii, p. 308.)

Under these circumstances, it is asserted by Venezuela that the adjustment of the equities of such settlers, provided for by Rule (*c*), whatever it requires, does not require any compensation to British settlers in territory which proves in the arbitration to have been Venezuelan. The grants to these settlers are of the most recent origin. As there was no British settlement in the

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disputed territory in 1850, west of the Moruca, neither was there any settlement in that territory until after 1880. All grants which have been issued have been issued subsequent to that date. As appears from the statement of Mr. im Thurn, grants were not made in the coast territory until 1890, and then they were given gratuitously to settlers who had up to that time been mere squatters, and many of whom had no connection with the British Government except the fact that they had settled upon land which that Government claimed. (B. C., VII, p. 273.)

Taking all these facts into consideration,—the recent character of the settlement, the Agreement of 1850 not to occupy this territory, still appealed to by Great Britain in 1887, the action of the British Governor in issuing conditional grants in June of that year, the action of the Colonial Secretary in removing the conditions annexed to those grants, in the following September,—can it be said that the adjustment of the equities of such settlers in territory which proves to be Venezuelan is a matter that devolves upon Venezuela? Is there any obligation upon Venezuela to respect such grants? Whatever may be the obligations of the British Government towards the grantees, is there any such obligation on the part of Venezuela? Will this Tribunal, in the face of the history of this dispute and of the action of Great Britain during the present century impose any liability upon the Venezuelan Government in behalf of these settlers? Will it not rather say that the grants were void *ab initio*, and that if the grantees are to remain in possession, they can only do so upon such terms as Venezuela may prescribe?

Only one more fact remains to be taken into consideration. A large part of the concessions given by the British Government since 1887 in the disputed territory relate to mining privileges. By reason of these privileges an immense quantity of gold, amounting in value to about twenty million dollars, has been taken from the territory. As far as placer mining is concerned, it has

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been stripped of an enormous source of natural wealth. The revenue derived by the British Government from royalties on these concessions has amounted to over a million dollars, a revenue which has, if this territory is decreed to be Venezuelan, been abstracted from it by the British Government at substantially no cost to itself. In view of this fact, certainly Great Britain should take care of her own grantees. She had the use of the territory without right for ten years, and in the exercise of that use she stripped it of its resources, at enormous pecuniary advantage to herself. Can she now, by reason of the fact that she took the risk of giving to her subjects the privilege of operating this business, to strip this territory to her own great pecuniary advantage, and in utter disregard of the possible rights of Venezuela, claim that Venezuela is under any responsibility to make good to these grantees any damages which they may suffer by reason of the establishment of Venezuelan title to the territory? To give such effect to British occupation would outrage reason, justice, the principles of international law, and the equities of the case.

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CHAPTER III.

DIPLOMATIC CORRESPONDENCE.

Having thus considered the meaning and scope of the treaty of arbitration, it is now proposed to take up the diplomatic correspondence between Spain and the Netherlands, and between Venezuela and Great Britain, with a view to ascertaining what territorial claims have been advanced, and upon what grounds those claims have been rested.

In a note addressed to Sir Julian Pauncefote November 26, 1895, Lord Salisbury stated that "the dispute on the subject of the frontier did not, in fact, commence till after the year 1840" (V. C.-C., vol. iii, p. 275.) This is true, so far as Great Britain and Venezuela are concerned; but to begin the study of the diplomatic correspondence at that point, ignoring what passed on the same subject between Spain and the Netherlands during the eighteenth century, would be to pass by a vital part of the controversy.

The significance of Great Britain's claims subsequent to 1840 can be appreciated only when it is considered that she succeeded to the rights of the Dutch. It is to the year 1747, therefore, that we first invite attention.

In the year 1747 there was a profound ignorance on the part of the Dutch as to the proper location of the boundary between the colony of Essequibo and the Spanish dominions. In September of that year "the Ten" adopted a resolution instructing that "all the respective Chambers, each by itself, investigate and inquire whether it can be discovered how far the limits of this Company in Rio Essequibo do extend" (V. C., vol. ii, p. 99).

In December, 1748, the Governor wrote to the Company, and,

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after referring to the talk of some old people and Indians, added: "but this talk gives not the slightest certainty" He also expressed a wish "that, if it were possible," he "might know the true boundary" (V. C., vol. ii, p. 101).

The visit of the Governor to Holland in 1750 led to many consultations on this point between himself, the Company and the Stadtholder—all without result—and he returned to Essequibo with the boundary still a matter of conjecture.

In 1754 he again appealed to the Company for "the so long sought definition of frontier" (V. C., vol. ii, p. 113), and asked: "Is not this regulated by the Treaty of Münster?" To this the Company answered: "We would we were able to give you an exact and precise definition of the proper limits of the river of Esse quibo such as you have several times asked of us; but we greatly doubt whether any precise and accurate definition can anywhere be found, save and except the general limits of the Company's territories stated in the preambles of the respective charters granted to the West India Company at various times by the States General" (V. C., vol. ii, p. 117).

The Spanish attack on the Cuyuni post in 1758 brought matters to a crisis. It obliged Governor Storm van 's Gravesande to take a definite stand in the matter; and hence, by his orders, the Military Commandant in Essequibo wrote, on December 8, 1758, to the Spanish Commandant in Orinoco:

"That in the name of the States General his Sovereigns he persists, and now for the second time demands the freeing of the prisoners and a suitable satisfaction for this violation and insult done to the territory of his Sovereigns, and that, since it seems to him, according to the letter in question, that you in Guayana and at Cumaná are ignorant of the boundaries of the territory of His Catholic Majesty and those of the States General according to the treaties at present subsisting, he has ordered me to send you the enclosed map on which you will be able to see them very distinctly. . . ." (V. C., vol. ii, p. 128).

D'Anville's map, here referred to, is reproduced as No. 16 in the Atlas accompanying the British Case; and it is important to note that the line there shown gave Barima Point and both

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the Barima and Amacura rivers, from their sources to their mouths, to Spain. The extreme claim of the Dutch in 1758, as regards the coast, is thus seen to have extended no further than just beyond the Waini River.

This statement of the Dutch claim in 1758 was communicated by the Dutch Governor to the Dutch West India Company; and the Company, so far from enlarging on it in the Remonstrance presented in 1759 to the Court of Spain, limited itself to affirming its immemorial possession, not of the Barima, nor of the Amacura, nor even of the Waini, but merely *of the Essequibo River and all its branches*. It asked "that reparation may be made for the said hostilities, and that the Remonstrants may be reinstated in the quiet possession of the said post on the river of Cuyuni, and also that through their High Mightinesses and the Court of Madrid a proper delimitation between the Colony of Essequibo and the river Orinoco may be laid down by authority, so as to prevent any future dispute" (V. C., vol. ii, p. 134).

Spain made no formal answer to this Remonstrance, and it is hardly necessary to add that the Dutch received no satisfaction. The practical result of the appeal was that Spain continued to occupy the Cuyuni and to exclude the Dutch from the post in the quiet possession of which these latter asked to be reinstated.

The Dutch Remonstrance of 1759 was followed by another in 1769. Between these dates the Dutch continued to exhibit vacillation and uncertainty regarding the location of their boundary, and to search for information as to where the line should run. The Spaniards, on the other hand, continued to exclude the Dutch from both the interior and the coast, and to assert sovereignty over the whole disputed region. A glance at some of the correspondence between the Dutch Governor and the Colony during this period cannot fail to be instructive. That correspondence shows, on the one hand, the ignorance of the Dutch authorities as to the extent of their territory, and their admission as to the extent of

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Spanish territory, and, on the other hand, the trifling and insignificant grounds upon which they based their extreme pretensions.

First, as to the ignorance of the Dutch:

Referring to the destroyed Cuyuni post of 1758, the Company thus wrote to the Governor on May 31st, 1759:

"Meanwhile we should like on this occasion to be exactly informed where the aforesaid Post on the River of Cuyuni was situated; for in the latest map made by you of the Colony we have found indeed, that river, but have not yet succeeded in finding the Post itself. Furthermore, what grounds you might be able to give us to further support our right to the possession of the aforesaid Post—perhaps a declaration by the oldest inhabitants of the Colony could in this connection be handed in, which might be of service. We should also like to have a more specific description of the Map of America by M. D'Anville, to which you appeal; for that gentleman has issued many maps dealing with that continent, and in none of these which have come to our notice have we been able to discover any traces [of what you mention,"] (B. C., II, p. 174).

Again, on December 3rd, 1759, they wrote:

"Wherefore we still request you to lay before us everything which might in any way be of service in proof of our right of ownership to, or possession of, the aforesaid river, because after receiving it we might perhaps present to the States-General a fuller Remonstrance on this head, with a statement of facts joined thereto. For this purpose there might especially be of use to us a small map of the River of Cuyuni, with indication of the places where the Company's Post, and also the grounds of 'Oud Duinenburg' and of the Company's coffee and indigo plantations were situated, and, finally, of the so-called Blue Mountain in which the miners carried on their work for our account," (B. C., II, p. 181).

And in the same letter they add:

"We see from your letter that you extend the boundary of the Colony in the direction of the Orinoco not only as far as Waini, but even as far as Barima. We should like to be informed of the grounds upon which you base this contention, and especially your inference that, Cuyuni being situate on this side of Waini, it must therefore necessarily belong to the Colony; for, so far as we know, there exist no Conventions that the boundary lines in South America run in a straight line from the sea-coast inland, as do most of the frontier lines of the English Colonies in North America" (B. C. II, p. 182).

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Seven years later the Company still continued in ignorance as to the proper boundary of their Colony. On September 25, 1766, they thus wrote to the Governor:

"In one of your preceding letters you told us that the place about the Barima, where some scum and offscourings of folk were staying together and leading a scandalous life, was Spanish territory, and that you intended to have Mr. Rousselet, who was going on a mission to Orinoco submit some propositions to the Spanish Governor for the extirpation of that gang. And now you inform us of your having sent thither the Postholder of Moruka with positive orders, probably *propria authoritate* without any concurrence of the aforesaid Governor, inasmuch as Mr. Rousselet had not yet departed thither on his mission, and we cannot quite make this tally with the other. If that place is really Spanish territory, then you have acted very imprudently and irregularly; and, on the contrary, if that place forms part of the Colony, and you had previously been in error as to the territory, then you have done very well, and we must fully approve of your course, as also of the Court's Resolution that henceforth no one shall be at liberty to stay on the Barima. But if the Court has no jurisdiction in that place, we see little result from that Resolution: *extra territorium suum jus dicenti enim impune non paretur*" (B. C., III, p. 137).

The above extracts are all taken from letters of the Company; and it will be observed that the ignorance which these exhibit is complete, so much so, indeed, that not even a suggestion came from the Company to enlighten the Governor or to help him to an understanding of what he should regard as being within his jurisdiction.

The letters of the Governor during this period prove the same ignorance on his part; they also serve to make clear the extreme Dutch claims of the eighteenth century; they disclose the origin of those claims, and they reveal the foundations upon which both those claims and the subsequent British pretensions have been built.

It will be remembered that in writing to the Spanish Commandant on the Orinoco complaining of the attacks upon the Cuyuni Post of 1758, Storm van 's Gravesande had transmitted a copy of D'Anville's map. That his own views were based

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upon D'Anville's authority is shown by the following extract from his letter to the Company, dated September 9, 1758:

"It is my opinion that this river is of the greatest importance to your Lordships, much more so than any one of the others, and also that it is perfectly certain and indisputable that they have not the slightest claim to it. If your Lordships will be pleased to look at the map of this country, drawn by Mr. D'Anville with the utmost care, your Lordships will clearly see that this is so" (B. C., II, p. 144).

It was during 1759 that van 's Gravesande seems to have first had any independent views of his own as to the boundary, for on September 1st, of that year, he thus wrote to the Company:

"The time is too short to enable me to send what your Lordships require concerning Cuyuni, and in this despatch I shall have to content myself with informing your Lordships that Cuyuni being one of the three arms which constitute this river, and your Lordships having had for very many years the coffee and indigo plantation there, also that the mining master, with his men, having worked on the Blue Mountain in that river without the least opposition, the possession of that river, as far, too, as this side of the Wayne, which is pretended to be the boundary-line (although I think the latter ought to be extended as far as Barima), cannot be questioned in the least possible way, and your Lordships' right of ownership is indisputable, and beyond all doubt" (B. C., II, p. 180).

It is important to note with regard to this letter, first that van 's Gravesande gives the Waini as the "pretended boundary"—pretended, of course, by the Dutch, not by the Spanish; second, that his own views, which were at that time the extreme views, were, for reasons not stated, that the line should go *as far as* Barima—that is to say, *up to* the Barima; third, that whatever rights the Company then had to the River Cuyuni were based upon certain facts, or supposed facts, which van 's Gravesande enumerates, namely, that the Cuyuni was an affluent of the Essequibo, that the Company had had "the coffee and indigo plantation there," and that "the mining master" had at one time done some prospecting "on the Blue Mountain."

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What weight ought to attach to the fact that the Cuyuni is an affluent of the Essequibo is a matter which will be considered in another part of this argument, and with regard to which the opinion of van 's Gravesande can hardly be controlling; the coffee and indigo plantation to which he refers was located below the lowest fall, and can hardly, therefore, be regarded as constituting an occupation of the river above those falls; similarly the work of the "mining master," by whom of course is meant Hildebrandt, was confined to the lowest reaches of the river, and even so was abandoned, as a failure, almost as soon as begun.

These were *all* the grounds adduced by van 's Gravesande in support of his claim, but that he rested little on them, and that what really influenced him was D'Anville's authority, is shown by the limit which he admits with regard to the Cuyuni, since his claim there was only to such part of it as lay "this side of the Wayne," that is to say, this side of that imaginary line appearing in D'Anville's map.

All this is confirmed by a later letter of van 's Gravesande, written on May 2nd, 1760, in which he says:

"I trust and doubt not that their High Mightinesses will obtain proper satisfaction for an act that is so entirely contrary to the law of nations, and I can very well understand that the death of the King of Spain must delay the settlement of the matter.

"I have very little to add to what I have already had the honour of submitting to your Lordships in several of my despatches, and although I am aware, as your Lordships are pleased to inform me, that no Treaties have been made which decided that the dividing boundary in South America should run inland in a direct line from the sea-coast, as is the case with the English in North America, it still appears to me (*salvo meliori*) to be an irrefutable fact that the rivers themselves, which have been in the possession of your Lordships for such a large number of years, and have been inhabited by subjects of the State without any or the least opposition on the part of the Spanish, are most certainly the property of your Lordships. I am strengthened in my view of this matter by the fact that Cuyuni is not a separate river like Weyne and Pomeroon (which *last* has been occupied by us, and still contains the foundations of your Lord-

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ships' fortresses), but an actual part of the River Essequibo itself, which is divided into three arms about 8 to 10 miles above Fort Zeelandia, and about one long cannon shot below Fort Kijkoveral, and to each of which the Indians give a separate name—the first Cuyuni, the second Massaruni (in which is Kijkoveral), and the third Essequibo—the principal stream below this division being called not Essequibo, but Araunama by the Arawaks, the real aborigines of this country.

"Although I do not doubt that your Lordships will now have received the map compiled by Mr. D'Anville, I have, in order to make the matter clear to your Lordships, copied that part of the map which relates to our possessions, and filled in with as much precision as possible the sites of your Lordships' plantation of Duynenburg, situated partly in Massaruni and partly in Cuyuni. In Cuyuni I have marked your Lordships' coffee plantation, indigo plantation, the dwelling place of the half-free creoles (to which the Spaniards came very close), and Blauwenberg, and [the] Post which was sacked, together with the sites of your Lordships' three other Posts in Maroco, Maykouny, and Arinda, up in Essequibo" (B. C., II, pp. 184–185).

Here again van 's Gravesande bases his claims, first, upon D'Anville's authority; and second, upon a supposed *possession* of certain rivers by the Company. When detailed reference is made to this so-called *possession*, it is significant that the Barima is not mentioned; that, in speaking of the Waini and the Pomeroon, van 's Gravesande distinctly limits the Company's possession to the Pomeroon—"which *last*," he says, "has been occupied by us"—and that the *possession* of the Cuyuni and Mazaruni is made to rest, (*a*) upon the existence of the plantation Duynenburg, situated at the point of junction of the Mazaruni and Cuyuni, (*b*) upon the coffee and indigo plantation, (*c*) upon the dwelling-place of the half-free creoles, (*d*) upon the mining at Blauwenberg, and (*e*) upon the Post which had been sacked.

The location of all of these places, except Blauwenberg and the sacked Post was *below* the lowest fall; while these two were but a short distance above them. The prospecting operation of Hildebrandt in the Blauwenberg, or Blue Mountain, have just been referred to above. As for the Post which had been

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sacked, it is clear that the establishment of a Post which was immediately destroyed by the Spaniards under a claim of right, can hardly prove either Dutch occupation or Dutch title.

Again, on August 12th, 1761, van 's Gravesande wrote:

"After taking everything out of the Company's canoe of Aechtekerke they let it go, and it came home, but they have kept the fine new canoe belonging to the plantation Duynenburg. The latter having been captured this side of Barima, I am of opinion that it was captured upon the Honourable Company's territory, for, *although there are no positive proofs to be found here*, so has always been so considered by the oldest settlers, as also by all the free Indians. Amongst the latter I have spoken with some very old Caribs, who told me that they remember the time when the Honourable Company had a Post in Barima, for the re-establishment of which they had often asked, in order that they might be relieved from the annoyance of the Surinam pirates; and then, lastly, *because the boundaries are always thus defined* by foreigners, as may be seen on the map prepared *by D'Anville*, the Frenchman, a small extract of which I have sent by the 'Demerary Welvaeren.'

"*These are the only reasons*, your Lordships, upon which I base my opinions, because *there are no old papers here out of which any information could be obtained*" (B. C., II, p. 201).

It is now known that the tradition about a former Dutch post in Barima, here referred to by van 's Gravesande, was without foundation; and in this connection attention is called to the fact that the Dutch Governor himself, the person most interested in proving the existence of such a post, and the one most likely to have had at hand the proofs, if any had existed, distinctly states that "*there are no positive proofs to be found here*," and that "*there are no old papers here out of which any information could be obtained.*" Even had such proofs been found, and the existence of the mythical post been established, van 's Gravesande distinctly limited his claim to "*this side* of Barima."

That the Barima was regarded by van 's Gravesande as Spanish appears even more clearly in the following extract from a letter, dated August 18, 1764, and in the British Case attributed to 's Gravesande. In this he says:

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"Whilst on this subject I take the liberty to inform your Excellency that mentioning the River Barima in those passes causes complaints from the Spaniards, who, maintaining that the river belongs to them, *in which I believe they are right*, some of these passes have already been sent to the Court of Spain" (B. C., III, p. 114).

It should be stated in this connection that D'Anville, along with other geographers, placed the Barima west of the Amacura. A reference to the Barima River may, therefore, really be to the Amacura. It is not, however, likely that van 's Gravesande made any such distinction between the two in the passages above quoted. As has been seen, his notions of boundary were derived from D'Anville, and all his arguments regarding Dutch possession and Dutch territorial rights were arguments intended to support, not any theory of his own, but simply *D'Anville's* line. Now, that line gave both the Amacura *and* the Barima to Spain; and hence, such must have been van 's Gravesande's own views of the matter. In further explanation of van 's Gravesande language, it should also be remembered that the names *Barima* and *Barima River* were, in those days, as they have been since, often used to designate the entire region which constitutes the southeastern bank of the Main or Ships Mouth of the Orinoco; and that it consequently included both the Barima and Amacura Rivers. When van 's Gravesande speaks of D'Anville's line and of the Dutch boundary going "as far as Barima," he evidently means as far as this undefined Barima *region*. Indeed, he could hardly mean anything else, because the D'Anville line does not in fact go as far as the river which D'Anville called Barima, but only as far as the river which he called Amacura.

Of equal, if not of greater importance, with van 's Gravesande declarations was the following formal statement, made on July 28, 1767, by the Amsterdam Chamber of the Dutch West India Company to the States General, in reply to the Memorial of the shareholders of the Zeeland Chamber:

"The second reason why there is no foundation for the claim of the Zeeland Chief Participants, that the silence of the Representative and the Direct-

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ors respecting the alleged addition of the oft-mentioned words 'and adjoined or subordinate rivers and places,' implies an acknowledgment that under this term Demerara must also be included, and that therefore from our side consent has been given to the surrender of that Colony, consists herein, that the natural meaning of the expression 'Essequibo and adjoined or subordinate rivers' is not that which the Zeeland Chief Participants attribute to it (namely, that all the places which are situate on the mainland of the so-called Wild Coast, between the boundaries which the Chief Participants themselves have arbitrarily and without giving any grounds therefor defined as extending *from Moruka* to Mahaicony, or from Rio Berbice as far as the Orinoco, are 'adjoined, subordinate to, and inseparable from,' the Colony Essequibo), but, on the contrary, only this, that under that description are comprehended the various mouths and rivers, originating from Rio Essequibo or emptying into it, which are marked on the map, such as, for instance, Cuyuni, Massaruni, Sepenouwy, and Magnouwe" (B. C., III, p. 147).

Certainly the Amsterdam Chamber in this statement regarded the *Moruca* as the *extreme* western boundary on the coast.

The final deliverance of the Dutch authorities on the boundary question is to be found in the Remonstrance of 1769. Ten years had passed since the Court of Spain had been appealed to for redress on account of the attack on the Dutch Cuyuni Post. No answer had been returned to that appeal, except that Spain continued to exclude the Dutch from both the interior and the coast. The Dutch attempt, in 1766, to establish another Post on the Cuyuni, below the Post of 1758, had resulted in the abandonment of that Post and in the removal of the post-holder to a new location still further down among the lowest falls of the Cuyuni. This removal was due to fears of Spanish attack. Spain had maintained an undisputed control on the Cuyuni River; Dutch and Caribs had been driven out; the Spaniards had been coming with impunity down to the lowest falls. On the coast the Dutch had been effectively excluded from the entire Barima-Waini region; they had been prevented from fishing in the Orinoco mouth; their trade on the Orinoco and Barima had been interdicted; Dutch slave traders had been

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cleared out of Barima; Dutch vessels in that region had been captured; the Spaniards had come even as far as the Moruka, and had attacked the Dutch post located there. It was because of all this that another and final Remonstance was addressed by the States General to Spain. The following are extracts from that Remonstrance:

"READ to the Assembly the Remonstrance of the Representative of his Serene Highness the Prince of Orange and Nassau, and Directors of the Chartered West India Company in the Presidial Chamber of Zealand, on behalf of the Company in general, as having the particular direction and care of the colony of Essequibo, and of the rivers which belong to it, declaring that they, the remonstrants, had in this capacity from time almost immemorial been in possession not only of the aforesaid River Essequibo and of several rivers and creeks which flow into the sea along the coast, but also of all branches and streams which fall into the same River Essequibo, and more particularly of the most northerly arm of the same river, called the Cuyuni; that from time immemorial also on the banks of the same River Cuyuni, which is considered as a domain of the State, there has been established a so-called Post, consisting of a wooden lodge, which, on behalf of the Company, like several others in this Colony, is occupied and guarded by a Postholder and outrunner or assistant, with some slaves and Indians.

"That, accordingly, the remonstrants, especially after what had happened in 1759, had been extremely surprised to learn by a letter from Laurens Storm van 's Gravesande, Director-General of the Colony of Essequibo, written the 9th February last, that a Spanish detachment coming from the Orinoco had come above that Post and had carried off several Indians, threatening to return at the first following dry season and visit Masseroeny, another arm of the Essequibo, lying between that and the Cuyuni River, and, therefore, also unquestionably forming part of the territory of the Republic, in order also to carry off from thence a body of Caribs (an Indian nation allies of the Dutch and under their jurisdiction), and then to descend the River Masseroeny, ascend the Cuyuni, and visit the Company's said Post in Cuyuni. (B. C., IV, p, 29.)

* * * * * *

"That they, the remonstrants, had taken all that as a mere threat, which, as on many other occasions, would have no effect, and this, although the Director-General aforesaid had also informed them, by a letter of the 21st February, 1769, of which they produced an extract (Addendum B),

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of the establishment of two Spanish Missions, occupied by a strong force, one not far above the Company's said Post in Cuyuni (apparently, however, on Spanish territory), and the other a little higher up on a creek which flows into the aforesaid Cuyuni River.

"That if, indeed, they could have expected or have had to look forward to an attack from the Spaniards in time of peace, it must, therefore, certainly have been from that side, especially in view of all that the Director-General had further mentioned in his letter of the 3rd March last, and of which an extract was added as Addendum C; but that they, the remonstrants, had learned with the greatest astonishment from a letter written by the Director-General, dated the 10th March last, to his son-in-law, the Commandeur of Demerara, which the latter had sent them in the original, and of which a copy forms Addendum D, that the Spaniards had begun to carry off the Indians from Moruca, and had made themselves masters of the Company's Post there, being a small river or creek south of the Weyne River, situated between the latter and the Pomaroon River, where from time immemorial the Company had also a trading place and a Post, and which also incontestably belonged to the territory of the Dutch. (B. C., IV, p. 30.)

* * * * * *

"That they, the remonstrants, considered it their duty to further bring to the knowledge of their High Mightinesses on this occasion that the people of the Orinoco had some time ago not only begun to dispute with the people of the Essequibo about the fishing rights in the mouth of the Orinoco, and thereupon to prevent them by force from enjoying the same, notwithstanding that the people of Essequibo had been for many years in peaceful and quiet possession of that fishery, which was of great value to them on account of the abundance of fish in it; but that, further, the people of Orinoco were beginning to prevent, by force, their fishing upon the territory of the State itself, extending from the River Marowyne to beyond the River Wayne, not far from the mouth of the Orinoco, as could be seen by the maps extant of those regions, particularly that of M. d'Anville, which on account of its precision was regarded as one of the best * * *." (B. C., IV, p. 31.)

These extracts should be read in the light of the correspondence between the Company and van's Gravesande, to which reference has above been made, The correspondence explains what was meant by the States-General when they allege "an almost immemorial possession" of the Essequibo, "of the rivers and

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creeks which flow into the sea along the coast," and of the Cuyuni. van 's Gravesande had distinctly limited that "possession" to the Pomeroon on the coast, and to the indigo and coffee plantations, the mining operations of Hildebrandt, and the destroyed or abandoned Posts in the interior. It was *that* possession which the States-General had in mind when they drew up their last Remonstrance. In this Remonstrance the States-General bear testimony to the effectiveness of Spanish control. They declare that Spanish forces had come down to the very junction of the Cuyuni and Mazaruni rivers, and had carried Indians away from there as captives.

In the next paragraph the States-General refer to the establishment of two Spanish missions, "one not far above the Company's said Post in Cuyuni," "and the other a little higher up on a creek which flows into the aforesaid Cuyuni River"; and the important admission is added, with reference to the nearer of these Spanish Posts, that it is "apparently, however, on Spanish territory." Thus did the Dutch recognize the fact that the Spaniards had rights upon the Cuyuni river, and that at least a part of that river was Spanish territory.

The next paragraph calls attention to the coast region. The Spaniards are declared to have made themselves masters of the Moruca Post; and, feeling that Dutch rights there were in question, the States-General sought to justify their title by alleging that the Moruca was south of the Waini, and near the Pomeroon, of which the Dutch had been long in possession.

The next quoted paragraph is all important, for it furnishes the final, authoritative, and official definition of the extreme pretensions of the Dutch on the coast. It begins by bearing testimony to the fact that the "people of the Orinoco" had by force prevented the Dutch from even fishing in the mouth of the Orinoco. As showing that territorial rights were not in the thought of the Dutch in connection with these Orinoco fisheries, the States-General add, that *further than that*, Spaniards were beginning to prevent

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their fishing even "*upon the territory of the State itself.*" Then follows a most important clause—a definition in express terms of that territory as "*extending from the River Marowyne to beyond the River Wayne, not far from the mouth of the Orinico*, as could be seen by the maps extant of those regions, particularly that of M. d'Anville" (*see* British Atlas, maps 16 and 23).

Here, then, we have a statement of the Dutch *extreme* claim on the coast, formulated by the Dutch West India Company, approved by the States-General, and communicated by them in a formal diplomatic Remonstrance to the Court of Spain. That statement is a distinct recognition of Barima Point and of the Barima and Amacura Rivers as Spanish, and it effectually estops the Dutch, and their successors the British, from claiming any part of that Point or of either of those rivers.

This Remonstrance, as we have said, was the last official Dutch utterance on the subject. Spain never answered it, but continued to exclude the Dutch from the Barima-Waini region and from the Cuyuni. The Dutch acquiesced; further protests were useless; they had no power to expel the Spaniards; and so seventy-one years of diplomatic silence ensued. No wonder that Lord Salisbury was led to believe that "the dispute on the subject of the frontier did not, in fact, commence until after the year 1840." Had he, and his predecessors in the Foreign Office, been more fully informed as to the earlier diplomatic history of the question, it is inconceivable that they would ever have put forward, as a demand based on *Dutch* rights, a claim either to Barima Point or to the Barima or Amacura Rivers, which the Dutch never dreamed of as theirs, and which the States-General, in 1769, distinctly and formally recognized to be Spanish territory.

A single incident breaks the silence between 1769 and 1840.

On February 10, 1836, and again on April 27 of the same year, Mr. Hamilton, British Vice-Consul at Angostura, wrote to Sir Robert Ker Porter, British Minister at Caracas, calling at-

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tention to the dangerous navigation of the Orinoco by the *Boca de Navios* or ships' mouth. A British brig had, in the month of January preceding, been lost there; and Mr. Hamilton, in reporting the circumstance, spoke of the advisability of having a beacon erected on the Point of Cape Barima, and urged the British Minister to bring the matter to the attention of the Venezuelan Government. He added the information that "there was a pilot-boat which was to have gone out every day from Point Barima and cruise about, but it was badly managed" (B. C., VII, p. 84). Of course he meant a Venezuelan pilot boat, and it is perfectly clear that in his mind Barima Point, from which the pilot boat had made or was to have made its daily start, and upon which he suggested the erection of a beacon, was Venezuelan territory. This is most important evidence as to the current local belief of the time regarding the ownership of Barima Point. Mr. Hamilton was a British official residing at Angostura, perfectly informed as to the navigation of the Orinoco, and naturally conversant with the views current there. Had there been a possibilty in his mind of Barima being English he would never have written as he did.

That Sir Robert Ker Porter made a request to the Venezuelan Government in conformity with Mr. Hamilton's suggestion, and if he did not at the time apprise his own Government of that request, his neglect simply shows that in his mind Barima was so indisputably Venezuelan that it never occurred to him that his action in making the request could ever come to have a political significance. Barima had never been held by the Dutch; had never been claimed by them or by Great Britain; had, on the contrary, been formally recognized by the highest Dutch authorities as Spanish. Spain had always held and claimed it, until succeeded in her rights by Venezuela; and thereafter Venezuela had continued to do the same. No thought had ever been entertained that it was other than Venezuelan territory. What more natural, therefore, than that a British Consul and a British Minister should act upon that belief. What better witnesses, what stronger evidence

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can we have, that the position deliberately taken by the States-General in 1769 regarding Barima had undergone no change during the sixty-seven intervening years? It had been recognized as Spanish in 1769 by Dutch officials; it was recognized now as Venezuelan by British officials, without hesitation and without a thought that it could be regarded as debatable ground. No wonder, then, that when, in 1841, news reached Angostura that the British flag was flying at Barima, the intelligence should have created "the utmost surprise and alarm" there (B. C., VII, p. 72). It proves how unprepared the public mind was for such an announcement; and it was not strange that Mr. O'Leary, then British Minister, in communicating the report to the Governor of British Guiana, should have refrained from justifying such action (B. C., VII, p. 72).

This incident of flag flying was pregnant with trouble. It was the unauthorized act of a young German naturalist, who for some years had been at work in British Guiana under the auspices of the Royal Geographical Society, and who had offered to, and been authorized by, the British Government to locate the boundary which he alleged to have been claimed by the Dutch during their possession of the Colony. Schomburgk's work will be made the subject of a separate chapter. For the present it is enough to point out that prior to his time no Dutch or British official had claimed Barima, and that his action in that regard gave rise to a controversy which has lasted fifty-eight years, and which, but for him, would never have involved the Barima region.

Confirming Schomburgk's views that whatever right Great Britain had to the Barima, was a right derived from the Dutch, Governor Light, on October 20, 1841, in writing to Señor Aranda, spoke of the "occupation of the Barima by the Dutch," and added the phrase, "from whom Great Britain derives her claim" (V. C., vol. iii, p. 198).

So the Earl of Aberdeen, in his note of January 31st, 1842, to Sr. Fortique, declared that in removing the posts erected at Barima

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and Amacura by Schomburgk, "Her Majesty's Government must not be understood to abandon any portion of the rights of Great Britain over the territory *which was formerly held by the Dutch in Guiana*" (B. C., VII, p. 80).

This view of the matter was later repeated in even stronger terms by Lord Aberdeen in his note of March 30th, 1844, to Sr. Fortique, where, reviewing the whole subject, he presented Great Britain's claim at length, basing it exclusively upon an alleged prior Dutch occupation.

These views, that British rights were founded exclusively on *Dutch* rights, that however the boundary might be run, it was a boundary separating former *Dutch* territory from former *Spanish* territory, and that there was no such thing as *terra nullius* between them, were in complete accord with historical facts and with the claims of all prior diplomatic correspondence.

The formal declaration of Lord Aberdeen on this subject committed Great Britain to the position thus taken. Unless Great Britain can show that she has, since 1844, acquired title to territory which, in 1844, belonged to Venezuela, her position must still be what her Prime Minister in that year declared it to be, and she should be held to it, taking the consequences, whatever they may be.

We have said that Schomburgk's survey was the immediate cause of the present boundary dispute. The origin of the Schomburgk line, its publication to the world, and its claims to consideration, will be discussed in another chapter. As a link in the diplomatic correspondence under examination, only that phase of it will now be considered which has direct reference to the extent and character of the claims put forth at various times by Great Britain.

The Schomburgk line was intended, both by Schomburgk and by the British Foreign Office, to be the definition of Great Britain's extreme claim founded upon Dutch occupation. The line involved no concession to Venezuelan rights. It meant

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no surrender of British territory. It was an expression of Great Britain's Case at the time. Whatever question there might be as to territory lying to the east, there was and could be none as to that lying west. That territory, past all doubt, was Venezuelan.

Lord Aberdeen on October 21 1841, in writing to Señor Fortique, referred to Schomburgk as one appointed "to survey and mark out *the boundaries between British Guiana and Venezuela*" (V. C. III, p. 199). And in another note of March 30th, 1844, in speaking of the British claim to the Orinoco and of the Venezuelan claim to the Essequibo, he uses this language:

"If the undersigned were inclined to adopt the spirit of M. Fortique's note, it is obvious, from what has been stated, that he must claim for Great Britain, in her right of succession to Holland, the entire coast from the Orinoco to the Essequibo. . . .

"But the Undersigned is of opinion that negotiations are not facilitated by putting forward claims which it is not seriously intended to maintain, and, therefore, he will not follow M. Fortique's example, but will declare at once what concessions *from her extreme claim* Great Britain, out of friendly regard to Venezuela, and from a desire to prevent the occurrence of any serious differences, is willing to admit.

"Believing, then, that the undivided possession of the Orinoco is the object most important for the interests of Venezuela, Her Majesty's Government are prepared to cede to the Republic a portion of the coast amply sufficient to insure Venezuela against the mouth of this, her principal river, being at the command of any foreign Power. With this view, and regarding it as a most valuable concession to Venezuela, her Majesty's Government are willing to waive their claim to the Amacura as the western boundary of the British territory, and to consider the mouth of the Moroco River as the limit of her Majesty's possessions on the sea-coast.

"They will, moreover, consent that the inland boundary shall be marked by a line drawn directly from the mouth of the Moroco to the junction of the River Barama with the River Waini, thence up the River Barama to the Annama, and up the Annama to the point at which that stream approaches nearest to the Acarabisi, and thence down the Acarabisi to its confluence with the Cuyuni, from which point it will follow the bank of the Cuyuni upwards until it reaches the high lands in the neighbourhood of Mount Roraima which divide the waters flowing into the Essequibo from those which flow into the Rio Branco.

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"*All the territory lying between a line such as is here described, on the one side, and the River Amacura and the chain of hills from which the Amacura rises, on the other,* Great Britain is willing to cede to Venezuela, upon the condition that the Venezuelan Government enter into an engagement that no portion of it shall be alienated at any time to a foreign Power, and that the Indian tribes now residing within it shall be protected against all injury and oppression" (B. C., VII, p. 90).

Now the line proposed above as the boundary to be agreed upon is what has come to be known as the Aberdeen Line; if to the territory lying east of that line there be added the territory described in the last paragraph above cited the result will be a territory bounded on the west by the present Schomburgk Line. Lord Aberdeen's proposition was that Great Britain should keep a part of this territory, and should cede the balance to Venezuela. Of course this was intended to be a complete and final settlement of the entire boundary question; Great Britain by the proposed cession forever extinguishing all claims which she might have to territory beyond the Aberdeen Line. This proposed cession, however, was of "all the territory lying between a line such as is here described (the Aberdeen Line) on the one side, and the River Amacura and the chain of hills from which the Amacura rises, on the other." If this meant anything it meant that that was the only territory west of the Aberdeen Line to which Great Britain could even pretend that she had a claim; or in other words that the Schomburgk Line constituted Great Britain's extreme claim. Even this extreme claim, Lord Aberdeen admits, it was "not seriously intended to maintain," and it was from this "extreme claim" that Great Britain, out of friendly regard to Venezuela, "was willing to make concessions."

Were it necessary more evidence might be referred to in support of the statement that the Schomburgk line in 1841 represented the extreme British claim. Certainly it cannot be necessary. Even the evidence already cited would seem to be in support of a fact too clear to need proof, were it not that Great Britain's extreme claim has constantly grown since, and that it

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has subsequently been seriously argued in her behalf that the Schomburgk line represented great concessions to Venezuela; that immense tracts lying to the west, and which for centuries have been the principal site of Spanish missions and villages, belonged of right to Great Britain; that those tracts are within the so-called disputed territory; and that Venezuela's continued occupation of them constituted a violation of the agreement of 1850.

A further important fact to be noted regarding Schomburgk's survey is that it did not constitute even a pretended occupation of the disputed territory. The correctness of this statement might well be questioned were it not that we are bound to accept upon this point the word and assurances of no less a person than Lord Aberdeen. As Prime Minister of Great Britain he distinctly disclaimed at the time any intention to occupy, and he declared that Schomburgk's acts were not to be construed by Venezuela as implying an occupation. The following are Lord Aberdeen's words:

"The Undersigned begs leave to refer to his note of the 21st October last, in which he explained to M. Fortique that the proceeding of Mr. Schomburgk in planting boundary posts at certain points of the country which he has surveyed was *merely a preliminary measure* open to future discussion between the two Governments, and that it would be premature to make a Boundary Treaty before the survey shall be completed.

"The Undersigned has only further to state that much unnecessary inconvenience would result from the removal of the posts fixed by Mr. Schomburgk, as they will afford the only tangible means by which Her Majesty's Government can be prepared to discuss the question of the boundaries with the Government of Venezuela. Those posts were erected for that express purpose, and *not*, as the Venezuelan Government appear to apprehend, *as indications of dominion and empire on the part of Great Britain.*

"And the Undersigned is glad to learn from M. Fortique's note of the 8th instant that the two Venezuelan gentlemen who have been sent by their Government to British Guiana have had the means of ascertaining from the Governor of that Colony that the *British authorities have not occupied Point Barima*" (B. C., VII, p. 79).

That the Colonial authorities were of one mind with Lord Aberdeen on this subject is clear from the language of Governor

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Light, as reported by Señor Fortique to the Earl of Aberdeen. Señor Fortique says:

"The second is the conduct observed by the Governor of English Guiana in his conferences with the Commissioners whom the Government of Venezuela accredited to him with the view of asking for explanations of those demarcations, as he manifested to them 'that inasmuch as the real boundaries between the two Guianas are undefined and questionable, *the operation of Mr. Schomburgk neither has nor could have been undertaken for the purpose of taking possession,* but only in the way of simply laying down the boundary-line supposed or presumed on the part of British Guiana, and that, therefore, while the confines remain undetermined, *the Government of Venezuela ought to rest assured that no fort would be ordered to be built on the territory in question, nor that any soldiers or force whatever would be sent thither*'" (B. C., VII, p. 78).

It was in answer to this that Lord Aberdeen wrote the note before, in part quoted.

This, then, was the situation when, in 1841, Lord Aberdeen gave his consent to the removal of the Schomburgk posts. Great Britain had notified Venezuela of the commission issued to Schomburgk; had adopted Schomburgk's work as an expression of the extreme British claim; had rested that claim upon a supposed former Dutch title; had disclaimed any intention to occupy the Barima; had thereby admitted that such occupation did not in fact exist; and, yielding to the force of Sr. Fortique's arguments, had ordered the removal of every semblance of British dominion from the line run by Schomburgk.

The order for the removal of the Schomburgk posts was followed by an interchange of diplomatic notes, which resulted on March 30th, 1844, in Lord Aberdeen's proposal of the line which bears his name. This proposal was not accepted by Venezuela, and the negotiations were thereupon suspended.

Matters continued in this unsettled state during the years from 1844 to 1850. In the latter year rumors were circulated, on the one hand, that Great Britain intended to "lay claim to the Province of Venezuelan Guiana" (Blue Book, Venezuela

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(1896) No. 1, p. 256); and, on the other hand, that Venezuela intended to erect a fort at Barima. These reports were communicated by the British Minister at Caracas to the Home Government, and, as a result, the former, acting under instructions from Viscount Palmerston, on November 18th, 1850, addressed a note to Sr. Lecuna, the Venezuelan Secretary of State for Foreign Affairs. In this note, after referring at some length to the rumors above mentioned, he said:

"The Venezuelan Government cannot, without injustice to Great Britain, distrust for a moment the sincerity of the formal declaration, now made in the name and by express order of Her Majesty's Government, that Great Britain has no intention of occupying or encroaching upon the disputed territory; hence, in a like spirit of good faith and friendliness, the Venezuelan Government cannot object to make a similar formal declaration to Her Majesty's Government, namely, that Venezuela herself has no intention of occupying or encroaching upon the disputed territory" (V. C. vol. iii, p. 212).

To this Sr. Lecuna replied, on December 20th, 1850, in part, as follows:

"By order of His Excellency, the President of the Republic, the Undersigned begs to state in reply that the Government never could have persuaded itself that, in despite of the negotiation open in this matter, and of the rights of Venezuela alleged in the question of boundaries pending between the two countries, Great Britain would desire to employ force in order to occupy the territory claimed by each country; much less could the Government think this possible after Mr. Wilson has so repeatedly assured it, and as the Executive Government believes with sincerity, that these imputations are destitute of any foundation whatever, and, on the contrary, are the very reverse of the truth.

"Reposing in this confidence, fortified by the protestations contained in the note under reply, the Government has no difficulty in replying that Venezuela has no intention to occupy or encroach upon ("usurpar") any part of the territory, the dominion of which is in dispute, and that it will not view with indifference that Great Britain shall act otherwise" (V. C., vol. iii, p. 213).

This interchange of formal declarations is what has come to be known as "The Agreement of 1850." In subsequent years each

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party has charged the other with violating it. It will be well to pause for a moment and to consider certain points which will later be useful in determining the truth of these charges.

Whether or not the Agreement has been violated depends, in the first place, upon what territory was intended to be included within its provisions. In his note to Sr. Lecuna, Mr. Wilson had used the phrase "disputed territory," without defining it in any way, except that in another part of the same note he referred to Point Barima as a place "the right of possession to which is in dispute between Great Britain and Venezuela" (Blue Book, Venezuela (1896) No. 1, p. 263).

In his reply Sr. Lecuna was somewhat more explicit. He said that the Venezuelan Government could never have persuaded itself that "Great Britain would desire to employ force in order to occupy *the territory claimed by each country*," and then declares his own country's intention not to occupy "any part of the territory *the dominion of which is in dispute*" (V. C. vol. iii, p. 213).

This definition of the "disputed territory" was satisfactory to the British Government, and must therefore be taken as binding upon it. What was "the territory claimed by each country" in 1850? No diplomatic correspondence on the subject had passed since 1844. The claims made by each Government in that year still held good. What were those claims?

So far as Great Britain was concerned we have already shown that *her* extreme claim did not go beyond the Schomburgk line. Indeed, in referring to that boundary, Lord Aberdeen had distinctly said that it was "not seriously intended to maintain" it. It is clear therefore that the western boundary of the disputed territory could have gone no further than the Schomburgk Line, if indeed it went even as far as that.

The eastern boundary is equally free from doubt. Spain's claim to the Essequibo had been repeatedly presented to Great Britain. Referring to it, in his note of March 30, 1844, Lord Aberdeen says:

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"Such a claim, independently of all question of right, would be practically far less injurious to Venezuela than that which M. Fortique has asserted is to Great Britain, inasmuch as, whilst Venezuela is without a settlement of any sort upon the territory in question, *the admission of the Essequibo as the boundary of Venezuela* would involve at once the surrender by Great Britain of about half the Colony of Demerara, including Cartabo Point and the Island of Kyk-over-al, where the Dutch had their earliest settlements upon the Mazaruni, the missionary establishment at Bartika Grove, and many actually existing settlements upon the Arabisi coast to within 50 miles of the capital" (B. C., VII, p. 90).

This may seem an extreme view, *from the British standpoint;* but, extreme or not, there was the claim; and in 1850 the British Government accepted Sr. Lecuna's description of the "disputed territory" as "*territory claimed by each country.*" Great Britain bound herself to respect that claim, and to neither "occupy or encroach" upon that territory. It is, indeed, reasonable to suppose that neither government expected, at the time, that any plantations or settlements actually located within the disputed territory were to be withdrawn. Indeed, the agreement did not contemplate evacuation. It provided that the territory in dispute should not be occupied or encroached upon; and such a stipulation, if interpreted as it might well be as having regard to the future, is quite consistent with the continuance of the plantations then existing along the Arabian coast. Its sole effect with regard to them would be to stop the running of any prescription which might otherwise be claimed in their favor.

But Lord Aberdeen is by no means the only witness to the fact that practically the entire territory between the Schomburgk line and the Essequibo was to be treated as disputed territory. On November 19, 1850, the very day following the British declaration that it would not encroach upon this territory, Mr. Wilson, the British Minister, in a despatch to Viscount Palmerston, said:

"Considering, however, the intrigues on foot to mislead and excite the public mind by the malicious assertion of the occupation of 'Fuerte Viejo' by British troops," etc. (V. C., vol. iii. p. 212).

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Now, *Fuerte Viejo* appears under the name of *Viejo Fuerte* in Codazzi's map. So far as we are aware it occurs in no other map. In Codazzi's map it is identified with Kykoveral, long since abandoned by both Dutch and British. How long must it have been abandoned, and how far removed from actual British settlements must it have been for Mr. Wilson to have indignantly referred to the "malicious assertion" that the British had occupied it? His reference to it at this time and in this way is proof that he regarded it as located within the disputed territory.

So matters stood in 1850. Both Governments excluded themselves from this disputed territory; and so long as the agreement continued neither Government, by acts in violation of it, could acquire title to the territory in question.

In 1876 and 1877, an ineffectual effort was made by Venezuela to arrive at some settlement regarding the boundary. Notes were addressed by Sr. Calcaño and Sr. de Rojas to the Earl of Derby, but nothing came of them. In 1879, the question was once more brought to the attention of the British Government, and negotiations were begun with the Marquis of Salisbury.

In a note dated May 19, 1879, Señor de Rojas called attention to the fact that thirty-eight years had passed since Venezuela had first urged Her Majesty's Government to conclude a Boundary Treaty. He referred to the line of right which Venezuela claimed, and stated that his Government was prepared to arbitrate that right. At the same time he suggested that Great Britain might prefer to agree to a line of accomodation or "convenience," and that if so he was prepared to negotiate on that basis.

Lord Salisbury's reply, while it contained an important admission, showed how the British view had changed since Lord Aberdeen's day. It contained an important admission because it recognized the fact that this boundary question cannot be decided, *as a matter of right*, without taking into account the rights that, under the rules of international law, belong to *discovery, first settle-*

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ment, conquest, cession and treaties. These are Lord Salisbury's words:

"With regard to the first of these questions, I have the honour to state that Her Majesty's Government are of opinion that to argue the matter on the ground of strict right would involve so many intricate *questions connected with the original discovery and settlement of the country,* and subsequent *conquests, cessions, and Treaties,* that it would be very inlikely to lead to a satisfactory solution of the question" (B. C., VII, p. 96).

In view of subsequent British statements, which seem to treat the question of discovery, first settlement, conquest, cession and treaties as something having nothing to do with this case, this statement of Lord Salisbury, which is in entire accord with the views of the most accredited writers on international law, and which has reference to this particular boundary dispute, is most important.

Having thus committed himself to the principles referred to, Lord Salisbury proceeded to define the extent and the basis of Great Britain's extreme claim. These are his words:

"The boundary which Her Majesty's Government claim, in virtue of ancient Treaties with the aboriginal tribes and of subsequent cessions from Holland, commences at a point at the mouth of the Orinoco, westward of Point Barima, proceeds thence in a southerly direction to the Imataca Mountains, the line of which it follows to the north-west, passing from them by the Highlands of Santa Maria just south of the town of Upata until it strikes a range of hills on the eastern bank of the Caroni River, following these southwards until it strikes the great backbone of the Guiana district, the Roraima Mountains of British Guiana, and thence, still southward, to the Pacaraima Mountains" (B. C., VII, p. 96).

It is hardly necessary to point out the enormous jump which the British "extreme claim" thus took. It was, indeed, a remarkable growth for thirty-six years, since the time when Lord Aberdeen had proposed to cede to Venezuela the Barima-Waini region; at that time Lord Aberdeen contenting himself with the mouth of the Moruca on the coast, had probably "compensated" himself in the interior by claiming west as far as the great bend of the Cuyuni. That claim may have done very well for 1844, but 1880 demanded greater things, and so about 15,000,000 acres were suddenly added to Great Britain's pretensions.

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It will be noted, too, that the basis of the British title had been modified. Schomburgk, Lord Aberdeen, and all who went before, had been content to rest British rights upon the former Dutch occupancy. Whether or not doubts had in the meantime arisen at the Foreign Office in London regarding the sufficiency of such Dutch rights, the fact is that another source of Dutch title was now for the first time alleged, and "ancient Treaties with the aboriginal tribes" were now for the first time invoked.

These treaties must have antedated the Dutch cession, for that cession is referred to by Lord Salisbury as something subsequent. What these treaties may have been, we are at a loss to know. They are not given in either the British Case or Counter-Case, and no explanation of them has ever been vouchsafed. If, in fact, they were ever made, or if, as seems more likely, Lord Salisbury was misinformed regarding them, it is very certain—for reasons set forth in another Chapter of this Brief—that they could have conferred no rights of sovereignty upon Great Britain. The subsequent diplomatic correspondence, and the Case and Counter-Case submitted to the Arbitral Tribunal by Great Britain, would seem to indicate that this claim of title based on Indian treaties has been abandoned.

The Marquis of Salisbury was succeeded shortly by Earl Granville, and the negotiations begun with the former were continued with the latter. Propositions and counter-propositions were followed, on September 15th, 1881, by a proposal from Lord Granville for the adoption of the line since known as the Granville line. The memorandum submitted by Earl Granville with his note of that date contains two passages which demand attention. They are the following:

"As regards that portion of the territory which lies between the . . . . . and the mouth of the Orinoco, Her Majesty's Government believe that that no impartial person, after studying the records, can escape the conviction that the Barima was undoubtedly before, and at the time of the conclusion of the Treaty of Munster (1648), held by the Dutch, and that the right of Her Majesty's Government to the territory up to that point is in consequence unassailable (B. C., VII, p. 99).

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"This boundary [referring to his proposed line] will surrender to Venezuela what has been called the Dardanelles of the Orinoco. It will give to Venezuela the entire command of the mouth of that river, and it yields about one-half of the disputed territory, while it secures to British Guiana, a well-defined natural boundary along almost its whole course, except for about the first 50 miles inland from the sea, where it is necessary to lay down an arbitrary boundary in order to secure to Venezuela the undisturbed possession of the mouths of the Orinoco; but even here advantage has been taken of well defined natural land-marks. The Barima, connected as before mentioned by its tributaries with the centre of the country of Essequibo, is also connected with the Waini by a channel through which the tide flows and ebbs" (B. C., VII, p. 100).

Both of these paragraphs, taken in connection with Earl Granville's proposition to draw a line which should give Barima to Venezeula, show that Earl Granville was in accord with Lord Aberdeen, both as to the basis of Great Britain's claim to Barima, and as to the superior right of Venezuela to the same place upon the principle of security.

Lord Granville distinctly says that "the right of Her Majesty's Government to the territory up to" the mouth of the Orinoco was "in consequence" of a supposed former Dutch possession of Barima. Indeed, he goes even further, and by implication admits that such supposed Dutch possession, in order to have been effective, must have antedated the Treaty of Munster, and must have continued to the very date of that Treaty. This is certainly good law.

In the second paragraph above quoted (which is the ninth of the memorandum) Lord Granville recognizes the superior right of Venezuela to Barima on the principle of security. It would be difficult to improve on Earl Granville's language. His testimony to the fact that Barima and the region thereabout constituted the "Dardanelles of the Orinoco" is testimony to a fact—a fact which should be controlling in this controversy. On the other hand, his proposition to surrender the Barima to Venezuela "*in order to secure to Venezuela the undisputed possession of the mouths of the*

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Orinoco" is a recognition of the principle of security and of the right of Venezuela to have awarded to her whatever might be necessary to insure that security to her Orinoco settlements.

Later correspondence of Lord Granville shows how fully he recognized this principle of security, and proves that while he was prepared to concede the application of the principle to Venezuela as her right, he was also influenced by it in considering what territory Great Britain must herself have.

It was on May 25th, 1883, that he thus wrote to Colonel Mansfield:

"It was considered that the proposals then made would yield to Venezuela every reasonable requirement, while securing the interests of British Guiana, and that any further Concession to Venezuela than is proposed in the Memorandum which was transmitted to you with my despatch of the 30th September, 1881, would have the effect of bringing the boundary-line into inconvenient proximity to the settled districts of the Colony of British Guiana, and would tend to deprive the Colonial Government of complete control over the water system of its territory" (B. C., VII, p. 103.)

Here we see clearly that, even as applied to Great Britain, who represented the title of a second comer, Lord Granville was of opinion that no line should be drawn which would bring Venezuela within "*inconvenient proximity*" to the settled districts of the Colony, or which should deprive Great Britain "of complete control over the water system of its territory." If Venezuela were to receive no more than that at the hands of this Tribunal, she would have awarded to her the whole of the Barima-Waini region as far as the mouth of the Moruca, for not otherwise can she enjoy that "complete control" of her water system, which Lord Granville invoked as a correct principle to apply to the case of even a second comer.

Earl Granville's propositions were not accepted by Venezuela. Negotiations continued, and had, in 1885, reached a point where an arbitration of the question had been agreed to. At this stage Lord Granville was succeeded by Lord Salisbury, who withdrew

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the consent of the British Government previously given to arbitration, and the question of boundary was once more set afloat on the sea of diplomacy.

The next two years witnessed a series of unsuccessful efforts to settle the question—efforts which, unfortunately, in February, 1887, resulted in the suspension of diplomatic relations between the two countries. The immediate cause of this suspension was an invasion of the Barima-Waini region by Great Britain, an invasion which Venezuela resented as a violation of the Agreement of 1850. Great Britain alleged in justification of herself that Venezuela had herself first violated that Agreement. To determine the truth of the matter, we must go back a few years.

Up to 1863 there was, so far as appears, no infraction of the Agreement of 1850 by either Government—understanding, of course, that this Agreement referred to only that territory which was in dispute in 1850. In 1863 an English Mining Company was formed in Georgetown to work mines located on the Cuyuni, about two days' journey above its mouth, and from twenty to thirty days' journey below Tupuquen—that is to say, located close to the Essequibo River. In 1867 the British Government caused a notice to be given to the Company to the effect that if the Company continued its operations in the disputed territory, those going there would be regarded as adventurers not entitled to British protection (V. C., vol. i, p. 183). The Company came to an end, and the action of the British Government in giving the above notice proves that it looked upon the locality where the mines were as a part of the disputed territory, and that it still considered itself bound by the Agreement of 1850.

Between 1880 and 1882, British mining exploration of the interior was renewed; and during the latter year the Puruni River, a branch of the Mazaruni, became known as a rich gold field (V. C., vol. iii, p. 323). The Puruni was much further in the disputed territory than the mines which had been worked

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in 1863 to 1867; and, of course, if the British Government had intended to observe the Agreement of 1850, it would have put a stop to these new mining operations just as it had done to the operations of the Georgetown Company in 1867. Instead of doing this, the British Government, in 1884, actually established regulations for the work; established offices for the collection of revenue from these mines; and imposed upon the gold produced a royalty which was thereafter regularly collected (V. C., vol. iii, p. 323). Here was clearly an infraction by Great Britain of the Agreement of 1850.

Prior to 1884, the Venezuelan Government had granted three different concessions for lands bordering on British Guiana. There is not, and never has been, any pretence that any actual entry was ever made under any of these grants into any part of the territory which was in dispute in 1850; but the granting of these concessions was, in 1884, used by the British Government as a pretext for taking formal possession of the Barima-Waini region as far west as the River Amacura.

The first of these concessions, dated May 12th, 1881, was granted to General Pulgar. It gave the right to work mines "in the State of Guayana," to construct railroads in that State, and to enjoy exclusive use of its water ways. It contained nothing derogatory to British rights in the disputed territory; and no one under its authority ever set foot in that territory. If, as the British Case alleges, General Pulgar ever published a map claiming any part of the disputed territory as included in his grant, that map was prepared and published without the sanction or knowledge of the Venezuelan Government.

The second concession was granted to C. C. Fitzgerald on September 22nd, 1883. It conferred upon the grantee certain rights in the Island of Pedernales, and also in the following described territory:

"The territory from the mouth of the Araguao, the shore of the Atlantic Ocean, the waters above the Greater Araguao, to where it is joined by

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the Araguaito stream, from this point following the Araguaito to the Orinoco, and thence the waters of the Upper Orinoco surrounding the Island of Tortola, which will form part of the territories conceded, to the junction of the Jose stream with the Piacoa, from this point following the waters of the Jose stream to its source, thence in a straight line to the summit of the Imataca range, from this summit following the sinuosities and more elevated summits of the ridge of Imataca *to the limit of the British Guiana*, from this limit and along it toward the north to the shore of the Atlantic Ocean, and lastly from the point indicated, the shore of the Atlantic Ocean, to the mouth of the Araguao, including the island of this name, and the others intermediate or situated in the Delta of the Orinoco, and in contiguity with the shore of the said ocean." (B. C., VI, p. 219.)

Mr. Fitzgerald having obtained this concession, which it is needless to point out does not in any way encroach upon British territory since it is in terms limited "*to the limit of the British Guiana*," appears to have published a map and a prospectus, both of which are reproduced in the Appendix to the British Case. Neither the map nor the prospectus was issued with either the sanction or the knowledge of the Venezuelan Government, and no possession was, under the authority of that concession, ever taken of any land within the disputed territory.

The third concession was to Herbert Gordon, and was dated May 21st, 1884. The limits of this concession were as follows:

"On the north the highest points of the Imataca range, and the lands granted to C. C. Fitzgerald; on the south the chain of Pacaraima; on the west a straight line drawn from the peak of Barlina in the Imataca range, passing the torrent and hills of Tasconi, and ending in the Pacaraima chain; *and on the east British Guayana.*" (B. C., VI, p. 221.)

Under this concession no possession of any part of the disputed territory was taken, and it will be observed that the concession itself was in terms bounded on the east by *British Guiana.*

None of these concessions were regarded seriously by the British Government. It was clearly understood by the British authorities that the maps and prospectuses published by the concessionees were not issued under Government authority. Colonel Mansfield, writing to Earl Granville on July 26th, 1884, said:

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"I have the honour to report to your Lordship that the Venezuelan Government has constituted a new 'Federal Territory' under the name of the 'Federal Territory of the Delta of the Orinoco,' which, according to the Decree, is to be bounded on the east *by British Guiana*, actual frontier not specified.

"A Governor and staff of officials have been appointed, and the site of the capital, which is to be called Manoa, has been selected on the south-easternmost branch of the Orinoco, or perhaps more properly on the extreme right channel of the Delta.

"I beg to enclose a small map, more or less giving the limits of the new territory. *This map has been published by Mr. Fitzgerald*, of the Manoa Company, who has a concession for colonizing the district, *and not upon the authority of the Venezuelan Government, whose Decree, as I mentioned above, merely speaks of British Guiana as the limit.*

"The above is of interest in connection with the pending question of the limits of British Guiana." (B. C., VI, p. 223.)

When Colonel Mansfield thus wrote, all three of the concessions above mentioned had been granted; and it is clear from the way in which he refers to them that the thought of their constituting an infraction of the Agreement of 1850 never occurred to him. Lord Granville evidently took the same view of the matter, for, referring to the Gordon concession, he wrote to Colonel Mansfield on August 19th, 1884, as follows:

"I have communicated to Her Majesty's Principal Secretary of State for the Colonies your despatch of the 2nd ultimo relating to a contract signed on the 21st May, whereby a concession has been granted by the Venezuelan Government to Herbert Gordon, an inhabitant of the Federal territory of Yuruary, for the colonization of a large district, the sovereignty over which is claimed both by Her Majesty's Government and by that of Venezuela.

"With reference to this matter, I have to request that you will find means to caution Mr. Gordon that his concession would not be of any validity in respect of any territory, proving to be English, which it may purport to cover.

"You should also find an opportunity to convey an intimation to the same effect to the Government of Venezuela, in order to guard against the possibility hereafter of the tacit acquiescence of Her Majesty's Government in the concession being advanced in support of the claim of Venezuela to the district in dispute." (B. C., VI, p 223.)

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On October 9, 1884, Colonel Mansfield wrote to Earl Granville as follows:

"I am informed that the Manoa Company is but a shadowy affair, not to call it, as my informant did, a mere bubble with a mendacious prospectus; while Mr. Gordon is living in a needy manner in Caracas and La Guayra, which does not look like colonizing a district half the size of Belgium." (B. C., VI, p. 224.)

Certainly Colonel Mansfield did not regard this "concession" as a very serious affair; and so little bearing did he consider that it had upon the Agreement of 1850 that when, on the same day, he wrote to the Venezuelan Minister, informing him of the notice which he had given Gordon and Fitzgerald that their concessions would not be regarded as valid in respect of territory claimed by Great Britain, instead of complaining of any infraction of the Agreement of 1850 by Venezuela, he limited himself to making the following representation:

"Lord Granville also wishes me to convey an intimation to the same effect to the Government of Venezuela, in order to guard against the possibility hereafter of the tacit acquiescence of Her Majesty's Government in the concessions being advanced in support of the claim of Venezuela to the districts in dispute.

"I have the honour to request your Excellency to explain to the President of the Republic that the above intimation is not inspired in the smallest degree by a spirit of hostility, but simply to guard against a misunderstanding in any future discussion of the boundary, a question which your Excellency is well aware is one of long standing, and which Her Majesty's Government would gladly see brought to a satisfactory solution." (B. C., VI, p. 224).

It was in the same month of October, 1884, that, according to the testimony of Sir Henry Irving, Governor of British Guiana, an agent of the Manoa Company posted up certain notices on the east side of the Amacura River. These notices were to the effect that all persons holding land on the Company's property should communicate with the Company. It will be noted that the posting of these notices was not an act of the Venezuelan Government; and even if it had been it would not have constituted any occupa-

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tion of the disputed territory; but, whatever the character of the act itself, the letter in which the British Governor communicated the information to the Earl of Derby furnishes the best possible proof of the way in which, for years before that time, Great Britain had, in the disputed territory, been doing systematically things of a far more serious nature and about whose official character and meaning there could be no doubt. This is what Sir Henry Irving had to say:

"Information having lately reached me that notices, of which I enclose a specimen, were being served by the agent of a Company styling itself 'The Manoa Company, Limited,' on the inhabitants of the territory lying on this side of the Amacura River, I deemed it proper to dispatch an officer of this Government to the district to ascertain and report on the operations of the Company.

"2. I selected for this duty Mr. McTurk, the Acting Special Magistrate of the Pomeroon district; and I have the honour to transmit to your Lordship copies of the instructions with which I caused him to be furnished and of his report. I also inclose copies of letters which I have received from the President *pro tem.* of the Manoa Company, accompanied by a prospectus and map.

"3. The Company has, it will be seen, obtained a concession from the Venezuelan Government of the territory lying between the Orinoco and the boundary-line of British Guiana. *The line is not defined by the concession,* but the *Company* have defined it for themselves by exhibiting in their map and prospectus the Moruca River as the limit of their grant.

"4. This is a definition against which the Colonial Government is bound to protest. Its effect would be to sever from the Colony the whole of the territory lying between the Moruca and the Amacura Rivers, *within which the Colonial Government has exercised jurisdiction for a long series of years,* to hand over to the tender mercies of a Foreign Joint Stock Company a considerable population of aboriginal Indians, many of whom have taken refuge in this territory from Venezuelan ill-usage, and who have learnt to regard themselves as living under British rule and under the protection of British law; and to surrender to a foreign power a control over the inland water communication of the Colony which would now be a source of embarrassment to the Government, and which might in the future endanger the safety of the Colony.

"5. The boundary between Venezuela and British Guiana being unsettled, *the Colonial Government has had to determine for itself the limits of*

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its jurisdiction. This it could only do by adopting some definite boundary line, and *it has taken for the purpose the line of compromise suggested by Sir R. Schomburgk,* which, as your Lordship is aware, is considerably within the territorial claim of Great Britain. Although that line has never been officially recognized by both Governments, *it has for a long series of years been taken for all practical purposes as the settled boundary of the Colony.* In illustration of this, I may state that *in criminal cases jurisdiction has been from time to time proved by showing that the crime occurred at a place on the British Guiana side of that boundary line.* The definite line thus adopted and recognized can only be given up if another definite line be adopted under proper sanction.

"6. The concession from the Venezuelan Government to the Manoa Company is to the boundary of British Guiana, without defining such boundary; and *it does not, therefore, in terms, appear to interfere with the rights of the Colony.* The Company, however, under color of the Venezuelan claims, are now seeking to exercise proprietary rights within the Colony, and are interfering with the inhabitants.

"7. In these circumstances, the Colonial Government has no alternative but to oppose the claims of the Company, and to take steps for the maintenance of order and for the protection of life and property.

"8. The means I shall propose to adopt for this purpose would be the employment of a revenue schooner carrying a small force of police, and the erection of one or more temporary buildings at the mouths of the Amacura, Barima, and Waini Rivers, or elsewhere, which could be occupied by the men as police stations, as occasion might require;" (B. C., VI., p. 225.)

Could any confession be more complete? In 1842, if the assurances of Lord Aberdeen and Governor Light are to be believed, Great Britain was not occupying the Barima. In 1850 the British Government entered into a solemn engagement with Venezuela not to occupy or encroach upon it. Venezuela had relied upon the good faith of Great Britain to keep that engagement; yet it appears that after a lapse of thirty-eight years, that engagement sat so light upon British officials that a British Governor could say, in the most matter of fact way in the world, that "*the Colonial Government has exercised jurisdiction for a long series of years*" between the Moruca and the Amacura; that it had, of its own motion adopted the Schomburgk line as the definite

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boundary line of the Colony; that that line had "*for a long series of years been taken for all practical purposes as the settled boundary of the Colony;*" and that "in criminal cases jurisdiction" had "been from time to time proved by showing that the crime occured at a place on the British side of that boundary line."

Venezuela does not admit many of the statements made by Governor Irving—but they constitute a complete estoppel against Great Britain to allege that Venezuela had by the acts complained of violated the Agreement of 1850; and in view of his statements, it may well be asked, what had become of the Agreement of 1850? Had not Venezuela claimed the Barima-Waini region in 1850? Had not Great Britain solemnly bound herself to respect that claim, and not to "occupy or encroach upon" that region? Yet here is the British Governor reciting what he had been doing there for years past in violation of that Agreement; and then proposing to send an armed force and to erect posts and buildings there —and for what? To keep out a number of private individuals who, without any authority from Venezuela, he alleges threatened to go there, and who were acting under a concesssion which the British Governor himself declared "*does not . . . in terms, appear to interfere with the rights of the Colony.*"

In other words, the British Governor gives his testimony, on the one hand, to the fact that the Venezuelan Government had not passed the Schomburgk line; and, on the other hand, alleges the further fact that for years past his own Government had, in violation of that Agreement, been occupying the whole of the disputed territory up to the very line which, in 1850, had marked the limits of Great Britain's extreme claim. Having stated these facts, the British Governor then proposes to strengthen the British hold upon that territory by sending an armed force into it and erecting police stations at the mouths of the Amacura, Barima and Waini Rivers.

Had the threatened action of the Manoa Company, which the British Governor feared, been invested with an official charac-

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ter; had it, in fact, constituted a violation by Venezuela of the Agreement of 1850; and had Great Britain, up to that time, faithfully observed that agreement herself, she would have been within her rights had she denounced that Agreement as no longer binding upon her. But the action of the Manoa Company was not the action of the Venezuelan Government; the posting up of the notices on the Amacura and the Barima was not an occupation of the disputed territory; Great Britain had herself been for years systematically violating the Agreement of 1850; and she not only failed now to denounce that Agreement, but continued for years thereafter to invoke it and to appeal to it as still in force.

While on the subject of this Agreement, it may be well to follow to the end the events which further determine its place in the present controversy.

What immediately followed was in line with Sir Henry Irving's recommendations. Mr. McTurk was sent to take forcible possession of the mouth of the Orinoco; and in 1885 the Barima-Waini region was organized into a separate British "district" under the jurisdiction of a special commissioner (V. C., vol. i, p. 186).

It might be inferred from this that Great Britain proposed to treat the Agreement of 1850 as no longer in force. Certainly, after Sir Henry Irving's confessions in 1884, after the formal and forcible occupation of the Barima by Mr. McTurk a few months later, and after the erection of the Barima-Waini region into a British "district" in 1885, Great Britain was hardly in a position to appeal to the Agreement of 1850 as against Venezuela; yet, strange to say, this is precisely what she did. It was in December of 1886 that the Venezuelan Government, having just learned of the British encroachments upon the Barima and upon the Amacura, determined to erect a lighthouse at Barima Point. Mr. St. John, the then British Minister at Caracas, gives a most instructive account of what took place; and the resulting correspondence between himself and the Earl of Iddesleigh throws much light upon the British attitude at that time.

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According to his own account (B. C., VII., p. 117), Mr. St. John, pursuant to request, called upon President Guzman Blanco, on December 6th, 1886, and was informed by the President that the Venezuelan Government proposed to erect a lighthouse at Barima Point. While the President explained that such action would be but to comply with the "alleged desire of" Her Majesty's Government in 1836, yet it is clear that the real reason which moved him was the then recent action of the British at Barima. The President informed Mr. St. John of "news of the very gravest kind" which had reached him, namely, that "Her Majesty's Government" had "formally taken possession of the disputed Guiana territory by establishing British functionaries upon it in violation of all previous understanding and arrangement." The answer of Mr. St. John was most significant. Not for one moment did he deny the existence of the "previous understanding and arrangement," referred to by President Guzman Blanco; neither did he allege any violation of that Agreement by Venezuela; neither did he attempt the slightest justification of the acts attributed to the British authorities; his only answer was that the rumor "was probably untrue." Certainly this was an admission that, if true, Venezuela's complaint was well founded; and that, if true, Great Britain had violated her engagements.

Having attempted in this way to meet President Blanco's charge, the British Minister next proceeded to protest against the proposed erection of a Venezuelan lighthouse at Barima Point, on the ground that "the erection of a lighthouse would still constitute a violation of disputed ground" (B. C., VII, p. 117). Here, then, we find the British Government at the very moment when, in violation of the Agreement of 1850, it was itself in full possession of the Barima-Waini region, invoking that Agreement against Venezuela. Was not this an admission that Venezuela had kept the Agreement up to that time? Or, if not this, was it not at least an admission that if there had been a previous violation on the part of Venezuela,

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Great Britain elected to stand by the Agreement and to hold it as still binding upon both Governments? Mr. St. John's action, which was reported to and approved by the Home Government, whatever other significance it may have had, certainly had this: It overlooked the acts of the Manoa Company, and all other previous acts which might be claimed to have been in violation of the Agreement of 1850; and it continued the life of that Agreement, notwithstanding such acts. If this be so, the British occupation of Barima at that time, an occupation of which Mr. St. John was evidently ignorant, forever barred Great Britain from justifying her own violations of the Agreement of 1850 by alleging previous violations by Venezuela.

That there may be no question as to the formal approval of Mr. St. John's action, and of the formal appeal made by Great Britain as late as 1887 to the Agreement of 1850 as an Agreement still in force, we quote Lord Iddesleigh's note in answer to Mr. St. John. That answer was dated January 12th, 1887, and contained the following words:

"You will inform President Blanco . . . that an attempt to erect such a lighthouse without the consent of Her Majesty's Government would be a departure from the reciprocal engagement taken by the Governments of Venezuela and England in 1850 not to occupy or encroach upon the territory in dispute between the two countries;" (B. C., VII, p. 118.)

In view of this appeal, in January, 1887, to the "reciprocal engagement" of 1850, and in view of the opposition made to the erection of a lighthouse by Venezuela as an act which would have been in violation of that Agreement, it is interesting to note, among others, the following passages:

From letter of Francis Stephen Neames, British Rural Constable, to Jesus Manuel Tebar and Santiago Rodil, dated December 24th, 1886:

"The Undersigned have received the official note, dated the 24th December, 1886, requesting to answer you about our appointments by the English Government of Georgetown, Demerara, and we have the honour to tell you

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that, in reality, *we have been appointed by Mr. Michael McTurk*, one of her Majesty's Stipendiary Magistrates in and for the Colony of British Guiana, *to be a Rural Constable in British Guiana,* as you have seen it in the precept signed by said Michael McTurk which we have handed to you. We also inform you that the Undersigned Francis Stephen *Neames has been acting Rural Constable since the 1st March,* 1885, *and the Undersigned George Benjamin Jeffrey has been appointed and acting as Constable since the 6th September,* 1886, *both as Constables in Amacura River.*

"We have not received instructions to interfere with the Venezuelan authorities on the right bank of the Amacura River, but we have instructions to prevent any foreign vessel from selling rum and other spirituous liquors on the English territories, in which case any vessel selling rum without a proper licence given by our government may be seized at any time." (V. C., vol. iii, pp. 252–253.)

From letter of Senor Urbaneja to Mr. St. John, dated January 26, 1887:

"The Head of the Commission has just returned here, and has informed the Government of its result.

"Unfortunately, the grave reports which caused that step are confirmed.

"Firstly, the Commission found in the neighbourhood of the right bank of the River Amacura two Commissaries, Messrs. Francis Stephen Neame and J. B. Jeffry.

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"In the said village of Amacura the Commision took declarations on oath from the Venezuelan Commissary, Mr. Robert Wells, and Messrs. Aniceto Ramuñez and Alfonso Figueredo.

"Their depositions . . . established the fact of the existence of a wooden house with a tiled roof, which serves as a public office, flies the British flag, was built by order and at the expense of the Colonial Government, and was seen by the Commisioners. It was in the same manner also proved that an English revenue-cutter, named 'Transfer,' had on various occasions made voyages to the Amacura, conveying the British Magistrate and armed police functionaries, with the object of inquiring into, judging, and deciding criminal and police cases; and that vessels legally dispatched from Ciudad Bolivar are registered in Amacura as well as in Barima, and are prohibited from selling their goods and continuing their course on the Barima unless in ballast, requiring them, in order to trade, that they obtain permission in Georgetown." (V. C., vol. iii, pp. 255–256.)

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Were these formal British acts—the exclusive jurisdiction established, the erection at Amacura of a "wooden house with a tiled roof which serves as a public office, flies the British flag, was built by order and at the expense of the Colonial Government," any less "a departure from the reciprocal engagement taken by the Governments of Venezuela and England in 1850, not to occupy or encroach upon the territory in dispute between the two countries," than would have been "the erection of a lighthouse without the consent of Her Majesty's Government" at Barima? If so that "engagement" could hardly have been "reciprocal."

We have said that Mr. St. John's action was reported to and approved by the Home Government. In this connection there is a circumstance which is not calculated to inspire confidence in the sincerity of the British authorities at that time. Mr. St. John had stated to President Blanco that "in order to prevent the disputed territory from becoming an asylum for criminals, these had often been pursued by British police, and could be similarly pursued by Venezuelan police when escaping from the other side" (B. C., VII., p. 118). This statement of Mr. St. John, so far as regards the pursuit of criminals by Venezuelan police, was distinctly disapproved by the Earl of Iddesleigh, who thus wrote on January 12th, 1887:

"In the first place I have to acquaint you that the language which you inform me you held at your interview with General Guzman Blanco has the approval of Her Majesty's Government; *they do not, however, wish you to say anything further concerning the pursuit of fugitives into the disputed territory by the Venezuelan police, as it is not desirable to encourage the Venezuelan Government to adopt such action.*" (B. C., VII., p. 118.)

Are we to understand from this that Great Britain, while claiming for herself, under the Agreement of 1850, the right to pursue fugitives from justice into the disputed territory, denied that right to Venezuela? If not, then only one of two interpretations can be placed upon the words of the noble Earl. Either both

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nations had the right to make the pursuit, in which case it appears that Her Majesty's Government proposed to "discourage" Venezuela, that is, to *prevent* Venezuela from doing what she had a right to do; or else neither nation had the right, in which case, since Lord Iddesleigh approved of what Mr. St. John had said relating to *British* police, it appears that Her Majesty's Government proposed to do and continued to do things which were in violation of this treaty engagement. There seems to be little choice between the horns of this dilemma. Either one places the British Government of that time in a very unenviable light.

It will be remembered that up to this time no violation of the Agreement of 1850 by Venezuela had been even *alleged*. The sending of Mr. McTurk to the Barima, in 1884, and the erection of the Barima-Waini region, in 1885, into a separate "district," were in consequence of the acts of a private Company, acting under a charter which Sir Henry Irving himself declared at the time, "*does not, therefore, in terms, appear to interfere with the rights of the Colony*" (B. C., VI, p. 225). It was not until three years later, when diplomatic relations between the two countries had, in consequence of British encroachments upon the disputed territory, been suspended, that Great Britain's action in that regard was sought to be justified by alleged prior violations by Venezuela of the Agreement of 1850. It was then that the action of the Manoa Company was *for the first time* laid at the door of the Venezuelan Government, and that that Government was charged with other acts of alleged "occupation and encroachment."

It was on March 7th, 1887, that Lord Salisbury thus wrote to Mr. St. John:

"The Venezuelan Government, in their note, also charge Her Majesty's Government with a breach of the reciprocal engagement of 1850.

"You are already aware, from General Guzman Blanco's note to the Earl of Rosebery of the 28th July, 1886, a copy of which was forwarded to you in the Earl of Iddesleigh's despatch of the 25th August last, that,

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although his Excellency complained of the action of the British Colonial authorities at the mouth of the Orinoco River in October 1884, and declared it to be a violation of the Agreement of 1850, no allusion whatever was made to the fact that on repeated occasions long prior to that date the Venezuelan Government had violated that engagement by granting concessions of land in the disputed territory for mining and other purposes.

"I refer especially to the concessions made on the 12th May, 1881, on the 22nd September, 1883, and on the 20th March, 1884, at the very time when proposals made by the British Government for the settlement of this long-disputed boundary question were said to be actually under consideration by the Venezuelan Government.

"Her Majesty's Government, therefore, consider that they were fully justified in issuing the Notice which appeared in the 'London Gazette' of the 22nd October, 1886, and in taking such other precautions as seemed to be necessary to safeguard the rights of Great Britain." (B. C., VII, p. 133.)

Six years later, when negotiations were proceeding in London with a view to re-establishing diplomatic relations, Lord Rosebery thus wrote to Senor Michelena:

"With regard to clause 4 of the *pro memoriâ*, in which it is proposed that both Her Majesty's Government and that of Venezuela shall acknowledge and declare that the *status quo* of the boundary question is that which existed in 1850, Her Majesty's Government consider that it is quite impossible that they should consent to revert to the *status quo* of 1850, and evacuate what has for some years constituted an integral portion of British Guiana. They regret, therefore, that they cannot entertain this proposition.

"The Declaration made to the Venezuelan Government in the year 1850 by Sir Belford Wilson, the British Chargé d'Affaires, was as follows: That 'whilst on the one hand Great Britain had no intention to occupy or encroach on the disputed territory, it would not on the other hand view with indifference aggressions in that territory by Venezuela.' The arrangement on this basis was disturbed by Venezuela on several successive occasions prior to any attempt on the part of Her Majesty's Government to exercise jurisdiction in the districts in question. In the same year (1850) in which the Declaration was made, the Venezuelan Government began to establish new positions to the east of Tumeremo, and in 1858 they founded the town of Nueva Providencia, on the south side of the River Yuruari. Again, in 1876, licences were granted by the Government of Venezuela to

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trade and cut wood in the district of Barima, and to the eastward of that district. In 1881, the Venezuelan Government made a grant of a great part of the disputed territory to General Pulgal, and in 1884 it made concessions to the Manoa Company and others, which were followed by actual attempts to settle the territory.

"In contrast to this action, the attitude of the British Government was marked by great forbearance and a strong desire to execute the arrangement in good faith. In proof of this disposition, it may be instanced that when applied to in 1881 to grant a Concession in the disputed territory to certain applicants they distinctly declined to entertain the proposal, on the ground that negotiations were proceeding with Venezuela, and it was not until the encroachments of the Manoa Company began to interfere seriously with the peace and good order of the Colony that Her Majesty's Government decided that an effective occupation of the territory could no longer be deferred, and steps were taken for publicly asserting what they believe to be the incontestable rights of Great Britain.

"Those rights they are unable now to abandon, and they could not consent that any *status quo* except that now existing should remain in force during the progress of the negotiations." (B. C., VII, p. 143.)

Finally, in his note of November 26, 1895, to Sir Julian Pauncefote, Lord Salisbury, after referring to the Declarations exchanged in 1850 between Venezuela and Great Britain, thus continues:

"This constitutes what has been termed the 'Agreement of 1850,' to which the Government of Venezuela have frequently appealed, but which the Venezuelans have repeatedly violated in succeeding years.

"Their first acts of this nature consisted in the occupation of fresh positions to the east of their previous settlements, and the founding in 1858 of the town of Nueva Providencia on the right bank of the Yuruari, all previous settlements being on the left bank. The British Government, however, considering that these settlements were so near positions which they had not wished to claim, considering also the difficulty of controlling the movements of mining populations, overlooked this breach of the Agreement. (V. C.-C., vol. iii, p. 279.)

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"In 1876 it was reported that the Venezuelan Government had, for the second time, broken 'the Agreement of 1850' by granting licences to trade and cut wood in Barima and eastward. (*ib.*, pp. 279–280.)

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"This boundary was proposed to the Venezuelan Government by Lord Granville in September 1881, but no answer was ever returned by that Government to the proposal.

"While, however, the Venezuelan Minister constantly stated that the matter was under active consideration, it was found that in the same year a Concession had been given by his Government to General Pulgar, which included a large portion of the territory in dispute. This was the third breach by Venezuela of the Agreement of 1850.

"Early in 1884, news arrived of a fourth breach by Venezuela of the Agreement of 1850, through two different grants which covered the whole of the territory in dispute, and as this was followed by actual attempts to settle on the disputed territory, the British Government could no longer remain inactive." (*ib.*, p. 281.)

It will be noticed, in the first place, that these statements of Lord Salisbury and Lord Rosebery regarding alleged violations of the Agreement of 1850 by Venezuela referred to acts, or supposed acts, which took place prior to December, 1886, when, as we have seen, Mr. St. John, on behalf of Great Britain, and with a full knowledge of these facts, invoked that Agreement as still in force. Whether or not these allegations had any foundation in fact, Great Britain, by appealing to that Agreement, as it did in 1886, elected to disregard them, and to hold by the Agreement itself as still binding. That a failure to denounce the Agreement, after receiving information of its violation by the other party, constituted an election to regard the Agreement as still binding, is asserted by Lord Salisbury himself, who, in the passages above quoted, referring to what he calls the first case of violation by Venezuela in 1858, says: "The British Government, however, . . . overlooked this breach of the Agreement" (V. C.-C., vol. iii, p. 279). That is to say, a breach may be overlooked by the innocent party, if he so wishes, and, in case of such election, the original Agreement continues in force. It follows as a matter of course that if the breach be overlooked and if the Agreement be regarded thereafter as still in force, the *overlooking* constitutes a *waiver* of the breach, and that, consequently, the breach so waived cannot thereafter be alleged to justify another breach by

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the party who elected to waive the first one. Such being the law, it follows that when, in December of 1886, Great Britain invoked the Agreement of 1850 as still binding, and when she based upon it her objection to the erection of a Venezuelan lighthouse at Barima Point, she thereby *overlooked* all those violations alleged by Lord Rosebery and Lord Salisbury, and having thus waived them could not thereafter, and cannot now, use them to justify violations of her own.

But, however sound this position may be in point of law, Venezuela has no need to rest upon it. As a matter of fact she has never—not even to this day—violated the Agreement of 1850.

Let it be remembered that that Agreement had reference to territory in dispute—not now—but in 1850. At that time the present Schomburgk line, according to Lord Aberdeen, marked the extreme British claim. About the territory to the west of it there was no dispute whatever. Tumeremo, to which Lord Rosebery referred, was, according to the British Atlas (map 4) eighty-five miles due west of that line, and had been founded as early as 1788. Nueva Providencia, to which Lord Rosebery and Lord Salisbury both referred, was, according to another British map (Blue-Book, V. p. 1, 1896) fifteen miles west of Tumeremo, that is to say, one hundred miles west of the territory which was in dispute in 1850. The grants to Pulgar, Fitzgerald and Gordon, as already explained, and as Sir Henry Irving at the time stated, did not interfere with the rights of the Colony; and the Venezuelan Government was certainly less responsible for the unauthorized acts of these concessionees than Great Britain herself had been for the acts of the British mining company which was organized in Georgetown in 1863, and which, from 1863 to 1867, continued to work mines in the disputed territory with the knowledge and without the interference of the British authorities. Even after four years' existence the British Government did nothing to *prevent* those mining operations; it merely refused to *sanction* them, or to extend its support to the Company. If that was a good rule

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to apply in 1867 to Great Britain, who for four years had allowed a British company to mine in the disputed territory, why is it not a good rule to apply to Venezuela in 1884 with regard to an insignificant, unmeaning and unauthorized act of an agent of a Venezuelan company?

The only other Venezuelan "*encroachment*" referred to by Lord Rosebery and Lord Salisbury, is that of certain licenses alleged to have been issued in 1876 "to trade and cut wood in Barima and eastward." What these licences may have been nowhere appears, for there is no evidence regarding them; and, as the British Case makes no mention of them, it is to be presumed that later investigation has satisfied the compilers of the British Case that no such licenses were issued.

To sum up, then, the various alleged Venezuelan violations relied upon by Lord Rosebery and Lord Salisbury amount to this: that Venezuelan settlements were made in Venezuelan territory at a distance of eighty-five and one hundred miles, respectively, west of the disputed territory, one in the year 1788 and the other in the year 1858; and that in 1881, 1883 and 1884 three grants were made by Venezuela relating to lands west of the British boundary, which did not, according to the statement of the then British Governor "in terms appear to interfere with the rights of the Colony."

As against these, we have, on the British side, this: for years, prior to 1884, according to Sir Henry Irving, the British treated their extreme claim of 1850 as the actual boundary of the Colony; they exercised jurisdiction there; in 1884, they took forcible possession of the mouth of the Orinoco; in 1885, the Barima-Waini region was organized into a separate British district; buildings were erected there under the protection of the British flag; and to-day, against Venezuelan protests, Great Britain is holding by force the territory which she agreed in 1850 to neither occupy nor encroach upon.

It is a familiar rule of law that rights are not acquired by

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repeating wrongs. British occupation, against Venezuelan protest and in violation of British Agreement, cannot be made the basis of British title.

The armed invasion of the disputed territory by Great Britain in violation of her Agreement of 1850, and her refusal to evacuate it, were the immediate cause of the suspension of diplomatic relations in February of 1887. Let us now take up the diplomatic correspondence which followed that suspension.

In January, 1890, some three years after the suspension of diplomatic relations, Venezuela attempted to reopen the discussion of the boundary question with Great Britain. She was induced to this action by certain representations made to her Minister in Paris by Sir Andrew Clarke and Captain Lowther, persons whom the Venezuelan Government then believed were acting with authority from the British Government. Clarke and Lowther represented to Venezuela that Great Britain was prepared "to evacuate the invaded territory, and to submit the case to the arbitration of a friendly Power, provided Venezuela would declare diplomatic relations to be re-established between the two countries" (V. C., vol. iii, p. 276).

The action of Sir Andrew Clarke and Captain Lowther was subsequently disavowed by the British Government, but it was due to the representations made by them that in January, 1890, Senor Urbaneja addressed himself to the Marquess of Salisbury. These advances by Venezuela were met by Great Britain with the following statement:

> "As regards the frontier between Venezuela and the Colony of British Guiana, Her Majesty's Government could not accept as satisfactory any arrangement which did not admit the British title to the territory comprised within the line laid down by Sir R. Schomburgk in 1841. They would be ready to refer to arbitration the claim of Great Britain to certain territories to the west of that line" (V. C., vol. iii, p. 274).

That a British Minister could, in 1890, make such a proposition shows the great expansion of the British claim since the days of

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Lord Aberdeen, and proves the completeness with which Great Britain had made herself mistress of territory, which, in 1850, she had solemnly pledged herself neither to occupy nor encroach upon. In 1844 the British premier put forward the Schomburgk line as Great Britain's extreme claim, thereby admitting that the territory to the west belonged to Venezuela. Forty-six years later (1890) another British premier refused to discuss the title to that territory which, in 1844, his predecessor had admitted to be doubtful; but expressed his willingness to submit to arbitration the title to territory which had not been in dispute in 1844, and which Lord Aberdeen had, at that time, admitted to belong to Venezuela. Could such a proposition be other than offensive to any self-respecting power? Venezuela declined the offer and these preliminary negotiations came to an end.

While these negotiations were without results, some of the correspondence merits attention.

A *Memorandum* from the British Foreign Office, dated February 13, 1890, affirmed the position taken by the British *Promemoriá* of February 10, 1890, and contained, among other things, the following statements:

> "The claim of Great Britain, on the other hand, to the whole basin of the Cuyuni and Yuruari is shown to be solidly founded, *and the greater part of the district has been for three centuries under continuous settlement by the Dutch and by the British as their successors.*" (V. C., vol. iii, p. 277).

This statement is made with reference to the region in which most of the Spanish Capuchin missions had been established, and of which, therefore, Spain and its successor, Venezuela, had been in exclusive possession for at least one hundred and fifty-six years prior to 1880. It was the region from which the Dutch were expelled by the Spanish in 1758, when the former attempted to put up a trading post on the lower Cuyuni; it was the region which, as regards the part west of

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the Cuyuni proper, Lord Aberdeen had, in 1844, admitted to be indisputably Venezuelan; and it was the region which, having been entered by British adventurers for the first time in 1863, was in 1867 declared by the British Government to be beyond the limits where British subjects could look to it for protection. Quite apart, however, from these facts, which alone suffice to disprove the above quoted declaration of the British Foreign Office, it is important to note that here again, as late as February, 1890, Great Britain still rested her title to the interior upon supposed Dutch settlements, and upon her succession to Dutch rights in that quarter.

This continued reliance by Great Britain upon former Dutch rights is even more clearly shown in the following passage, taken from a later British *Memorandum*, dated July 24th, 1890:

"That territory, and by far the greater portion of the large tract of country which the Venezuelan Government seeks to put in question, accrued to the Netherlands under the Treaty of Munster of 1648 by right of previous occupation. It was constantly held and claimed by the States-General in succeeding years. It was publicly and effectively occupied by Great Britain during the wars at the close of the last century, and the formal transfer of the country so occupied was effected by the Treaty of Peace with the Netherlands of the 13th August, 1814, and was in no way questioned by Spain on the conclusion of peace with her in the same year." (V. C., vol. iii, p. 283).

The Memorandum from which this passage is taken contains another important statement. The Venezuelan Case regards the Barima as a part of the Orinoco system, and treats Point Barima as Orinoco territory (V. C., vol. i, p. 14). The British Case (p. 8), on the other hand and also the British Counter-Case (p. 6) attempt to deal with the Barima as though it were something separate from the Orinoco, and treat the Barima-Waini region, including Barima Point, as a basin by itself (British Atlas, map 3). The British Memorandum of July 24th, 1890, to which we have referred, was a reply to a propo-

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sition submitted by Señor Pulido. Pulido's memorandum was in part as follows:

"The Government of the United States of Venezuela should formally declare that the River Essequibo, its banks, and the lands covering it belong exclusively to British Guiana, and Her Majesty's Government should formally declare that the Orinoco River, its banks, and the lands covering it belong exclusively to the United States of Venezuela." (V. C., vol. iii, p. 280.)

The British answer to this was as follows:

"The proposed Declaration, if it be correctly understood, would recognize the right of Great Britain to the main stream only of the Essequibo and the land immediately upon its banks, without including its tributaries, in exchange for a similar recognition of the right of Venezuela to the main stream of the Orinoco, and the land upon its banks and in the neighbourhood of its mouth, including Point Barima and the adjacent district, . . ." (V. C., vol. iii, p. 283.)

This definition by the British Foreign Office of what was included under the term "Orinoco River, its banks, and the lands covering it," formulated at a time when British interests were apparently not menaced by such definition, is obviously entitled to greater weight than the subsequent allegations of the British Case and Counter-Case contradicting it.

These preliminary negotiations of 1890, as already stated, ended without accomplishing anything. Another and final attempt was made by Venezuela three years later, through Señor Michelena. This attempt was likewise doomed to failure; but certain statements made in the course of the correspondence merit attention.

On May 26, 1893, Señor Michelena submitted to the Earl of Rosebery a *Pro-memoria* containing certain proposed bases for the settlement of the boundary question. The first of these bases began thus:

"The Government of Great Britain claims certain territory in Guiana, as successor in title of the Netherlands, and the Government of Venezuela claims the same territory as being the heir of Spain"; (V. C., vol. iii, pp. 286–287).

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These had up to that time been the acknowledged bases upon which both titles rested: Great Britain had never claimed any other source of title. This formal statement presented by Venezuela, as a mere preamble to a proposition for the settlement of the boundary dispute, was returned by Lord Rosebery, amended as follows:

"[Whereas] The Government of Great Britain claims certain territory in Guayana as successor in title of the Netherlands and [by right of conquest as against Spain, and whereas] the Government of Venezuela claims the same territory as being the heir of Spain; . . . " (V. C., vol. iii, p. 289).

The modifications thus introduced give to this preamble an importance which it would not otherwise have. As modified it must be taken to embody, in an authoritative manner, all that could, at the time, be claimed as sources of British title. If Great Britain had, in 1893, relied in any measure upon prescription, or upon the existence of a no-man's land between the original Dutch and Spanish possessions and a British occupation of that land, or upon Indian treaties or Indian relations of any kind, Lord Rosebery would certainly have so stated in this preamble. The fact that he made modifications in it, and that he added words which more clearly defined the origin of the British title, proves that he intended the preamble to be both accurate and exhaustive in this regard. Whatever other sources, therefore, the British title may in fact have, it is clear that no other was known to the British Government in 1893.

Having noted this fact, let us next inquire into the meaning of the words added by Lord Roseberry to this preamble. A title "by right of conquest as against Spain" can refer to nothing later than 1648. The Netherlands certainly acquired no title by conquest *after* that year. It has at times been contended, and is now maintained by the British Case that, after the Treaty of Munster, the Dutch enlarged their domains; though it is at the same time asserted that such enlargement was the result of *peaceful* occupation under the

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terms of the treaty, not of conquest. So also with regard to Great Britain, since Lord Rosebery wrote in 1893, a number of new claims have been put forward, to prove British rights to the disputed territory; but there is no pretence, so far as we are aware, that Great Britain ever conquered any part of it from Spain—certainly there could be no foundation for such a claim were it made. Such being the case, it must be that when Lord Rosebery inserted the words "by right of conquest as against Spain," he referred to the title originally acquired by the Dutch, for that title was, in fact, "a title by conquest." If we are correct in the interpretation thus placed upon Lord Rosebery's words, the admission is a most important one, for it recognizes that the Dutch came to Guiana to war against Spain on Spanish soil, and that the rights which they thus acquired are to be measured by the strict rules applicable to such cases.

But this is not the only admission made by Lord Rosebery in the course of this correspondence of 1893.

One of the claims of the British Case is this:

"That prior to 1796 the Dutch, and, *since that date* the British, have been in possession of all the territory now in dispute" (B. C., pp. 18–19).

This claim is repeated later in the following language:

"After the acquisition of the Colony by the British, Great Britain exercised over the territory now in dispute all those rights by which nations usually indicate their claim to territorial possession." (B. C., p. 120.)

It goes without saying that if the British have been *in possession* of this territory during the entire century; if they have, in fact, *exercised over it all the sovereign rights of a nation* during that period; and if this *possession* and *exercise of sovereign territorial rights* are to serve as bases of British title—and such is evidently the intention of these allegations—then that *possession* or *occupation* must have been *effective*—nothing else can suffice; nothing else can sustain the allegations of the British Case. It is precisely here that Lord Rosebery upsets the British contention;

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for, writing to Señor Michelena on July 3rd, 1893, he says, speaking of the Agreement of 1850:

"In contrast to this action, the attitude of the British Government was marked by great forbearance and a strong desire to execute the arrangement in good faith. In proof of this disposition, it may be instanced that when applied to in 1881 to grant a Concession in the disputed territory to certain applicants they distinctly declined to entertain the proposal, on the ground that negotiations were proceeding with Venezuela, and it was not until the encroachments of the Manoa Company began to interfere seriously with the peace and good order of the Colony that her Majesty's Government decided that *an effective occupation of the territory could no longer be deferred*, and steps were taken for publicly asserting what they believe to be the incontestable rights of Great Britain." (V. C., vol. iii, pp. 288–289).

If this mean anything, it means that prior to 1884, the now alleged British occupation of the Barima-Waini region and of the Cuyuni region had not been "*an effective occupation*"—an occupation, that is to say, which under the rules of international law could be made the basis of a title by occupation. Of course this admission by a British premier is conclusive, for it is an admission against interest.

With the failure of Señor Michelena's mission, the diplomatic correspondence between Great Britain and Venezuela came to an end.

Before closing this Chapter attention should be called to one or two passages in subsequent instructions, to Sir Julian Pauncefote, which show that, as late as the close of 1895, the British Government still continued to rely exclusively upon a *Dutch* title.

On February 23, 1895, the Earl of Kimberley thus wrote to the British Ambassador in Washington:

"On the other hand, Great Britain has throughout been prepared to make large abatements from her extreme claim, although Her Majesty's Government have been continually accumulating stronger documentary proofs of the correctness of that *extreme claim* as being their *inheritance from their Dutch predecessors*." (V. C., vol. iii, p. 260.)

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On November 26, 1895, Lord Salisbury thus stated the origin of the British claim:

"The title of Great Britain to the territory in question is derived, in the first place, from conquest and military *occupation of the Dutch settlements* in 1796. Both on this occasion, and at the time of a previous occupation *of those settlements* in 1781, the British authorities marked the western boundary of their possessions as beginning some distance up the Orinoco beyond Point Barima, *in accordance with the limits claimed and actually held by the Dutch, and this has always since remained the frontier claimed by Great Britain.*" (V. C.-C., vol. iii, p. 275.)

To the very last, therefore, the British rested even their *extreme* claim upon the "inheritance from their Dutch predecessors," and asserted a frontier "in accordance with limits claimed and *actually held* by the Dutch." These repeated statements by British authorities with regard to the exclusively *Dutch* origin of the British title have been dwelt upon at length because of the complete change of front, in this regard, presented by the British Counter-Case in the following passages:

"It is admitted that Great Britain acquired Guiana from the Dutch, but, for the reasons given in other parts of this Counter-Case, Her Majesty's Government protest against the attempt made in the Venezuelan Case to confine the extent of British dominion to the limits of territory actually settled by the Dutch." (B. C.-C., p. 33.)

"The history of the British occupation of Essequibo is entered upon in the Venezuelan Case with a reservation that the definition of the present boundary must depend upon the extent of Dutch and Spanish rights in 1803, and that the British claims cannot in law have anything in the history of the present century to support them (*ib.*, p. 107.)

* * * * * * * *

"The contention that the British claims cannot in law have anything in the history of the present century to support them, is not correct. In the first place it is clear that by virtue of Article IV, Rule (*a*) of the Treaty of Arbitration, Great Britain is entitled to retain whatever territory has been held by her, or has been subject to her exclusive political control for a period of fifty years, although the result might be to give to Great Britain territory which had never been Dutch, and might even conceivably have at one time been Spanish. Moreover, there has been nothing to prevent the extension of British settlement and control, if the regions into which

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such extensions were made were at the time lying vacant. Territory added to the British Colony by such extension cannot be awarded to Venezuela, however recent the British possession may have been." (B. C.-C., pp. 107–108.)

If the earlier claim of the Earl of Kimberley and of Lord Salisbury, and of every other British premier and Foreign Secretary who has written on the subject during the past sixty years, are sound, then every inch of territory within Great Britain's *extreme* claim, is now British *because it was formerly Dutch.* In this last British utterance, however, new sources of title are, for the first time, alleged. Prescription is invoked under Article IV, Rule (*a*), of the Treaty of Arbitration; and that, too, with regard to territory, which, it is suggested, "*had never been Dutch, and might even conceivably have at one time been Spanish.*" So, too, contrary to every historical fact, and in conflict with every claim ever made by Dutch or British, it is suggested that there was a no-man's land between Dutch-British settlements, on the one hand, and Spanish-Venezuelan settlements, on the other, and that this "vacant" territory could lawfully be appropriated by Great Britain, and must now be awarded to her "however recent the British possession may have been."

What is the significance of a claim which prior British assertions render impossible and untenable? Has faith in "Dutch inheritance" begun to weaken? Is the fact at last realized by our adversaries that "British possession" is, in fact, a matter of very recent date?

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CHAPTER IV.

THE SCHOMBURGK LINE.

Our study of the Diplomatic Correspondence would not be complete did we omit to consider more fully than we have yet done Schomburgk's work and the various lines which bear his name.

The Schomburgk Line has played an important part in this boundary controversy. Schomburgk's survey of the Barima and Amacura in 1841, the erection of boundary posts at the mouths of those rivers, and his formal assumption of possession of that region on behalf of Great Britain, revived a dispute which had lain dormant for seventy-two years. The claims to which that and subsequent Schomburgk surveys gave rise, the treatment of those claims and surveys in after years by the British Government, and the contradictory character of maps and lines which have at various times been attributed to him, or which have been alleged to be based on his authority, have given rise to a host of questions whose scope would seem to cover the whole boundary dispute, and whose seeming contradictions have at times seemed to baffle solution.

The investigations of the United States Commission, the contributions which have since been made to the subject, and the important maps and papers recently submitted with the Case of Great Britain, tend to simplify these questions, and for the first time render possible a satisfactory answer to them. It is the purpose of this Chapter to formulate and to consider some of these questions.

Before doing this, it may be well to state very briefly the facts which constitute the history of the Schomburgk lines; the proof of what we have to say will follow.

In 1839 Schomburgk proposed to the British Government to survey a line which, beginning at the mouth of the Amacura

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River, runs substantially south, and cuts the Cuyuni some fifty or sixty miles west of the Essequibo; this is what has been called *Schomburgk's Original Line*. That particular line was approved by the British Government in 1840, and Schomburgk was authorized to survey it. Between 1840 and 1842 Schomburgk surveyed parts of *another* line, and suggested that other line to the British Government as a *desirable* boundary; this new line is what has been called *Schomburgk's Expanded Line*. The British Government, having had that expanded line mapped by Mr. Hebert, filed it away in its secret archives, together with Schomburgk's maps and reports, and for the next forty-four years—that is to say, until 1886—continued to treat the Original Schomburgk Line of 1839 as the boundary line of the Colony, publishing it as such on several official maps. In 1886 the *Expanded Line*, which had been proposed by Schomburgk in 1842 and which had lain rejected by the British Government for forty-four years, was first published, and from that date to this, that once rejected line has been treated by Great Britain as the actual boundary of the Colony.

Let us now formulate and consider the various questions to which these facts give rise. And, *first*, what was the purpose of the Schomburgk survey?

In his Memoir of July 1, 1839, addressed to Governor Light, Schomburgk said:

"By an Additional Article to a Convention signed at London, the 13th August, 1814, Demerara, Essequibo, and Berbice were finally ceded to Great Britain. The British Empire acquired, therefore, Guiana, *with the same claims to the termini of its boundaries as held by the Dutch before it was ceded by Treaty to Great Britain.*" (B. C., VII, p. 3.)

"When the settlements were in the possession of the Netherlands the present countries of Demerara and Essequibo were divided into the Colonies of Pomeroon, Essequibo and Demerara. * * * As the first was the most western possession, and formed the boundary between Spanish Guiana, its limits were considered to extend from Punta Barima, at the mouth of the Orinoco, in latitude 8° 4′ north, longitude 60° 6′ west, south-west by west to the mouth of the River Amacura, following the Caño Cuyuni from its

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confluence with the Amacura to its source, * * * These limits of our territory were contested by the Spaniards." (*ib.*, p. 4.)

Then follows a discussion of alleged historical and geographical facts, concluding with this statement:

"According to the foregoing remarks and propositions the boundaries of British Guiana would be: * * *

"3. The Western Boundary—From the source of the River Takatu, along its right bank to the junction of the River Xuruma of the Portuguese, to the source of the River Cristaes or Coting, in 5° 9′ 30″ north latitude along the northern slope of the Roriema Mountains, to the source of the Caco, pursuing from thence, in a northern direction, the line of separation between the rivers that flow into the Mazaruni, and the tributaries of the Cayuni, towards the Rinacotto, traversing the River Cayuni at the mouth of the streams Aruarua and Parawayauri, and extending in a northerly direction across the Sierra Imataca, to the source of the stream Cayuni, following that river to its junction with the River Amacuro to the embouchure of the latter river at the mouth of the Orinoco." (B. C., VII, p. 6).

After a further review of the question, he arrived at this conclusion:

"My deductions from the different circumstances to which I have attempted to draw the attention of your Excellency, are that it is practicable to run and mark the limits of British Guiana on the system of natural divisions, and that *the limits thus defined* are in perfect unison with the title of Her Britannic Majesty to the full extent of that territory." (B. C., VII, p. 7.)

This Memoir, with an accompanying map, reproduced as Number 43 in the British Atlas, was forwarded by Governor Light to the Marquess of Normandy, with a recommendation that Schomburgk be employed to survey the limits of British Guiana (B. C., VII, p. 1). The British Colonial Office referred Governor Light's recommendation to the British Foreign Office, with the following statement:

"I am directed by Lord John Russell to request that you will submit for the consideration of Viscount Palmerston the accompanying copy and extract of despatches which have been received from Mr. Light, Governor of British Guiana.

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"I am to request that you will observe to Viscount Palmerston that Lord John Russell considers it to be important that the *boundaries between British Guiana and the conterminous territories* should be ascertained and agreed upon if possible, and that Mr. Schomburgk's researches in those parts, which were conducted under the direction of the Royal Geographical Society with the aid of Her Majesty's Government, have qualified him in a peculiar manner to be of use should the services of any person acquainted with the geography of British Guiana be required for the *delimitation of the British territory*" (V. C., vol. iii, p. 76).

The answer of the Foreign Office was, in part, as follows:

"With reference to that part of your letter in which you state that Lord J. Russell considers it to be important that the boundaries of British Guiana should be ascertained and agreed upon if possible, and that Mr. Schomburgk's researches in those parts have qualified him in a peculiar manner to be of use, should the services of any person acquainted with the geography of British Guiana be required for fixing *the boundaries of British territory*, I am to state to you that the course of proceeding which Lord Palmerston would suggest for the consideration of Lord J. Russell is *that a map of British Guiana should be made out according to the boundaries described by Mr. Schomburgk*, and that the said map should be accompanied by a Memoir describing in detail the natural features which define and constitute *the boundaries in question*, and that copies of that map and Memoir should be delivered to the Governments of Venezuela, of Brazil, and of the Netherlands *as a statement of the British claim*. That, in the meanwhile, British Commissioners should be sent to erect landmarks on the ground in order to mark out by permanent erections the line of *boundary so claimed by Great Britain*. It would then rest with each of the three Governments above mentioned to make any objection which they might have to bring forward against these boundaries, and to state the reasons upon which such objections might be founded, and Her Majesty's Government would then give such answers thereto as might appear proper and just" (V. C., vol. iii, pp. 76–77).

It will thus be seen that Mr. Schomburgk proposed to survey a line which he specifically described; which he declared to be the line formerly claimed by the Dutch as the limit of their Colony; that he proposed that line because, according to him, the British boundary and the former Dutch boundary were identical; and that finally it was proposed by Lord Palmerston to draw the line

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so described as a *statement of the British claim*, and to present it as such to Holland, Brazil and Venezuela.

The propositions of Schomburgk were accepted by the British Government; and, with Schomburgk's map before it (British Atlas, map 43), showing a line which runs practically north and south from Barima Point to Mt. Roraima and which cuts the Cuyuni some sixty or seventy miles above its junction with the Essequibo, that Government authorized a survey of "*the boundaries described by Mr. Schomburgk*"—that is to say, of that north and south line—and directed that, upon the completion of that work, the new map to be prepared, with that line upon it, should be delivered to the Governments of Venezuela, of Brazil and of the Netherlands "*as a statement of the British claim.*"

This is certainly good evidence of Great Britain's *extreme claim* at that time. It is also evidence of the fact that British limits, were, in 1840, regarded by the British Government as identical with the Dutch limits of the preceding century, and that these limits had constituted a common boundary with Spain.

It is evident, from what has been said, that the *purpose of the Schomburgk survey* was to mark out the limits which had been *claimed* by the Dutch as the boundary of their Colony, so that the line so surveyed might be presented to the Governments of Venezuela, Brazil and the Netherlands "as a statement of the British claim."

Furthermore, it is evident that both Schomburgk and the British Government regarded the north and south line of Schomburgk's map of 1839 (British Atlas, map 43) as a correct statement of what the Dutch had claimed.

Whether or not they were right in this last assumption is a question of some importance, for if the north and south line proposed by Schomburgk in 1839 in fact exceeded the earlier Dutch claim, then Great Britain's express determination to accept the Dutch claim as a definition of British rights would necessarily operate to cut down still further the British *extreme* claim in 1839.

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Second.—This leads us to inquire what *basis* there was *for Schomburgk's assertion that his line of* 1839 *did in fact express the Dutch claims of the Eighteenth Century.* In his Memoir of July 1 (16), 1839, he cites no authority for this assertion, but states it simply as a fact. Two years later apparently some doubt on this point had arisen in the minds of the British authorities, for on October 23, 1841, Schomburgk, at Governor Light's request, made a "special report" on the subject. The following statements are taken from that report:

"In compliance with your Excellency's desire to be informed upon what grounds I claimed, in Her Britannic Majesty's name, the right of possession of the River Barima, and the eastern bank of the River Amacura as the western boundary between Her Majesty's Colony of British Guiana and the Venezuelan territory:

"I beg leave to observe . . . that, according to Hartsinck, the Dutch West India Company considered the mouth of the Orinoco to be the limit of their possessions; . . .

"Modern English geographers assume the Amacura as boundary from whence the line of limit extends to the sources of the Canno Coyunni, and from thence to the River Cuyuni.

"I refer your Excellency to the maps published by Mr. Arrowsmith and others in the course of the last ten years." (B. C., VII, pp. 31–32.)

So, in a Memorandum on the same subject, dated November 30, 1841, he says:

"In 1621 the States-General granted to some Dutch merchants, who formed a corporation under the name of the West Indische Maasschappy, or West India Company, an exclusive right to all the African and American commerce, and the right of governing any new colonies which it might acquire, retaining to themselves the power of nominating the Company's Governor-General abroad.

"This grant comprised the coast from the Orinoco to the eastward and Hartsinck, the authentic historian of Guiana or 'the Wild Coast,' as it then was called, mentions in several places that the limits of the West India Company extended to the mouth of the Orinoco.

* * * * *

"It has been my aim, with the limited resources which I have at my command, to prove that the Orinoco was, at the 17th century, politically

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recognised as the boundary of the Dutch West India Company." (B. C., VII, p. 35).

These various extracts give us Schomburgk's authorities on the subject of Dutch *claims*. In addition to these he cited historical facts, or alleged facts, to prove that the Dutch had a *right* to the mouth of the Orinoco; but we are not at this moment concerned with Dutch rights. What we are now considering is what the Dutch *claimed*, not what they had a *right* to claim; and upon this point we find that Schomburgk's authorities are: (*a*) The Charter of the Dutch West India Company of 1621, (*b*) Hartsinck, (*c*) Rolt, (*d*) W. Faden, (*e*) Thomas Jefferys, (*f*) Arrowsmith. We submit that these authorities are hardly sufficient to establish Schomburgk's contention respecting Dutch *claims*. As regards the effect of the Charter granted to the Dutch West India Company in 1621, the claim made above by Schomburgk was repeated in the British Case, and was thus answered in the Venezuelan Counter-Case:

"The States General of the Netherlands, by the charter which they granted to the Dutch West India Company in 1621, granted to that Company only such monopoly of trade as it was in their power to grant, to wit, a monopoly against other Dutchmen, not a monopoly against the world. The territorial limits of that monopoly were no less than the whole of North and South America and a good part of Africa. It will hardly be contended that the States-General claimed to control the trade of those continents; much less can it be maintained, as intimated by the British Case, that the Company was, by virtue of the charter, vested with a monopoly of trade as against other nations." (V. C.-C., vol. i, p. 74.)

This whole subject is fully discussed by Professor Burr in his Report to the United States Commission, and the fallacy of the position taken by Schomburgk is there fully demonstrated.

Schomburgk's other authorities are Hartsinck, who published in 1770, Rolt, who wrote in 1750, and three English geographers whose maps were published in 1773, 1798 and 1832, respectively. These authorities may have been sufficient for Schomburgk in 1839–1841, because at that time very little was known about the

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subject. Governor Light himself, in writing to the Marquess of Normanby, on July 15, 1839, had said:

"There are no documents in the archives of the Colony respecting the western or southern limits of British Guiana. The memoir of Mr. Schomburgk is therefore valuable." (B. C., VII, p 1.)

This being the case, Schomburgk can hardly be blamed for having relied on the only authorities within his reach. Fortunately, however, we do not now have to depend upon the say-so of historians or map-makers, but can go direct to the archives of the Dutch West India Company. Those archives place the matter quite beyond dispute: they furnish us with the reports of the Dutch Governor to the Dutch West India Company, with the record of the Proceedings of that Company, and with the diplomatic correspondence on the subject between the Netherlands and Spain. That correspondence has been examined in the preceding Chapter, and need not be repeated here further than to quote the following passage from the so-called *Great Remonstrance* presented to the Court of Spain in 1769:

"That they, the remonstrants, considered it their duty to further bring to the knowledge of their High Mightinesses on this occasion that the people of the Orinoco had some time ago not only begun to dispute with the people of the Essequibo about the fishing rights in the mouth of the Orinoco, and thereupon to prevent them by force from enjoying the same, notwithstanding that the people of Essequibo had been for many years in peaceful and quiet possession of that fishery, which was of great value to them on account of the abundance of fish in it; but that, further, the people of Orinoco were beginning to prevent, by force, their fishing upon the territory of the State itself, *extending from the River Marowyne to beyond the River Wayne, not far from the mouth of the Orinoco, as could be seen by the maps extant of those regions, particularly that of M. d'Anville*, which on account of its precision, was regarded as one of the best" (B. C., IV, p. 31).

This was the last authoritative Dutch utterance on the subject, and must be deemed conclusive as against Great Britain. The d'Anville line, which is here presented as the extreme Dutch

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claim, is thus described by Messrs. Coote and Bolton in the Appendix to the British Case:

"It is drawn in a straight line from a point on the coast which almost coincides with that known as Mocomoco, nearly to the Amuku Lake, separating the waters of the Orinoco from those of the Amazon, leaving the Rivers Amakura, Barima, Carapana and Caroni to the west."

(B. C., VII, p. 353.)

This entirely coincides with the definition of territorial rights given above by the States General, when they declared that the "territory of the State itself" extends "from the River Marowyne to beyond the River Wayne, not far from the mouth of the Orinoco."

Clearly, then, the Dutch had not claimed Barima Point nor the Barima River nor the Amacura, but only as far west on the coast as about Point Mocomoco; and Schomburgk was wrong when he asserted that the Dutch claim had included that point and those rivers.

The result of all this is important. Whether the line asserted by Schomburgk in 1839 to be the line which marked the limits of prior Dutch claims did or did not correctly mark those limits, Great Britain, by her action at the time, accepted without qualification the principle laid down by Schomburgk that British claims were to be measured by Dutch claims. Having committed herself to that principle, the British extreme claim must necessarily be limited by the Dutch extreme claim; and hence Schomburgk's error as to what that Dutch extreme claim had been places Great Britain in this dilemma: either she must surrender her claim to all territory west of Point Mocomoco, including Barima Point and the Barima and Amacura Rivers, because the Dutch claim did not include these; or else she must violate the principle which she laid down for her own guidance in 1840, and press a claim to territory which the Dutch did not claim, and which both the Dutch West India Company and the States General of the Netherlands admitted, in 1769, to be Spanish.

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Having thus disposed of Schomburgk's assertion that his line of 1839 represented what the Dutch had *claimed*, and having shown the position in which the approval of Schomburgk's propositions and proposals by the British Government places that Government, let us next inquire

Third.—What was it that *Schomburgk actually did in the execution of the task entrusted to him.*

It is now claimed by Great Britain that as a result of his surveys Schomburgk finally proposed as the western boundary of British Guiana the line which appears on Hebert's map of 1842 (British Atlas, maps 38, 39). Let us, for the present, assume the correctness of that statement. Between this line and the line proposed in 1839 there is a difference of about 10,300 square miles. If the line of 1839 already exceeded the extreme claim of the Dutch, what shall be said of this new line of 1842? Clearly it cannot have been drawn with any regard to Dutch *claims*. The fact is that having once obtained his commission and started out on his work of survey, Schomburgk's enthusiasm seems to have quite run away with him; and, instead of adhering to his instructions to survey the line proposed by him in 1839, and to mark out what the Dutch had claimed, he seems to have almost forgotten that line, and to have regarded Dutch *claims* only when they happened to fall in with his own notions of British interests. In illustration of this we quote the following passages from his reports:

"Taking namely the mouth of the River Barima as the place of departure; the line of demarcation ought to be directed to the mouth of the River Amacura, *in order to be able to insure the political importance which always would be attached to the mouth of the Orinoco*" (B. C., VII, p. 5).

Again, after having stated in his report of August, 1841, that during the period 1750–1760, "the Dutch possessions extended *to the foot* of that series of falls of which Kanaima is the most considerable" (B. C., VII, p. 28), and having also stated that the Island Tokoro-patti had been "towards the close of the last

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century the *furthest outpost of the Dutch*" (B. C., VII, p. 28), he nevertheless makes the following claim in his report of January 23, 1842:

"I consider that Her Majesty has undoubted right to any territory through which flow rivers that fall directly, or through others, into the River Essequibo. Your Excellency is well aware that the Cuyuni falls a few miles above the penal settlement into the Mazaruni, and both rivers after their junction empty themselves at Bartika Point into the Essequibo. Upon this principle the boundary line would run from the sources of the Carimani towards the sources of the Cuyuni proper, and from thence towards its far more northern tributaries, the Rivers Iruari and Iruang, and thus approach the very heart of Venezuelan Guiana.

"These rivers are of less importance to Great Britain, but as a maritime power the possession of Point Barima is of great importance, and relinquishing the claim to the territory watered by the Upper Cuyuni and its northern tributaries, the Iruari or Iuruario, and Iruang, Her Majesty's Government acquires additional grounds to impress the claim of Point Barima the Dardanelles of the Orinoco, as it has been lately styled by the Venezuelans. *Upon these grounds* I considered it unnecessary to proceed further towards the sources of the Cuyuni" (B. C., VII, p. 50).

Whether Schomburgk was right or wrong in holding these views—and we are not now discussing that point—it must be clear that the line which he was surveying when he wrote the above was not a line based upon Dutch *claims*. Neither could it have been based upon Dutch *occupation*, for, according to his own statements, Tokoro-patti, which is about 220 miles east of the extreme line above suggested, was the farthest outpost of the Dutch.

Of course, Schomburgk never seriously proposed any such preposterous line as that suggested in the passage above quoted. The most that he proposed in the Cuyuni region was the line appearing in Hebert's map of 1842, but that he regarded even that line as extravagant, and as going beyond the limits of Dutch *rights* can be seen from the following passage taken from his final *Memorandum* to Lord Stanley, dated December 26, 1844:

"I expect likewise that the Venezuelan Government will oppose the right bank of the River Cuyuni being taken as a boundary line from where

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that river receives the Acarabisi to its source, and from thence to Mount Roraima, *in consequence of the Spaniards having had a fortified post, called Cadiva, opposite the mouth of the River Curumu.* Her Majesty's Government may easily meet such an opposition by drawing their attention to the circumstance that the Dutch possessed a fortified post where the River Barima falls into the Orinoco; nevertheless, Her Majesty's Government has resolved to forego the claim to the possession of that territory, between the former Dutch post and the Maroco, in order to facilitate the negotiations for an adjustment of the limits. (B. C., VII, pp. 60–61.)

In order to grasp the full meaning of this passage, it should be remembered that it was written as a commentary on the line proposed a few months before by Lord Aberdeen. Lord Aberdeen had proposed to yield to Venezuela the entire Barima region, and had suggested the line on the Cuyuni River in the interior. Schomburgk at once recognized the fact that that interior Cuyuni line could not be upheld upon the basis of any Dutch claim or Dutch occupation, and that therefore the British had no *right* to it. He recognized, too, that Venezuela could allege a better title to that river by actual occupation, for he said the Spaniards "had a fortified post, called Cadiva, opposite the mouth of the River Curumu," but he suggested that this objection, which he fully expected would be raised by Venezuela, might be met by Great Britain by her saying: "True, Spain was in possession of the Cuyuni, but so were the Dutch in possession of Barima, and, as we have given you Barima on the coast, you should give us the Cuyuni *as compensation* in the interior."

We can hardly want better evidence to prove how completely Schomburgk had abandoned all thought of Dutch *claims* or even of Dutch *rights*, and how intent he had become upon securing for Great Britain everything that could by any possibility be obtained for her.

We do not mean by this that Schomburgk ever completely lost sight of the fact that he must allege some Dutch justification for his Line, or that he must advance arguments to prevent it from having the appearance of being wholly arbitrary. On

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the contrary, he seized upon every possible circumstance to impress upon his line a Duch character, and to make it appear as though even his extreme pretensions had some sort of Dutch basis. What we mean is that he did not feel himself bound or limited by any such considerations. One cannot read his reports and letters, especially his "*confidential*" letter to Governor Light, without feeling that Schomburgk, ever zealous for British success and for the extension of British rule, had made up his mind to claim certain points because he regarded them as of political importance; and that his arguments, drawn from supposed historical or other considerations, were of the nature of afterthoughts, intended to support what he had already determined to claim. His "*confidential*" letter of October 23, 1841, is alone sufficient to prove this point; its importance warrants its quotation in full:

"In my letter of this day's date, I informed your Excellency upon what grounds I founded the right of possession of Her Majesty to the Barima, and I have now to point out the importance which is attached to this position, should the British Government establish the Amacura as the boundary between British Guiana and Venezuela.

"The River Orinoco may be termed the high-road to the interior of the territories of Venezuela and New Granada. It has at his mouth the appearance of an ocean, and articles of commerce may be transported on this stream for 400 or 500 leagues. Nearly 300 tributary streams, of more or less importance, flow into it, which may serve as additional canals and facilitate the commerce of the interior. Santa Fé de Bogota may be reached within a distance of 8 miles by one of its tributary streams, the Meta, and operations of commerce or war, combined with others from the Pacific, could be carried on by means of the vast plains or llanos. A small fleet may go up the Orinoco and the Meta within 15 or 20 leagues of Santa Fé, and the flour of New Granada may be conveyed down the same way.

"And the only access to this vast inland communication for sailing vessels of more than 10 feet draft of water is by means of the Boca de Navios, which is *commanded from Point Barima.*

"The River Barima falls into the south side of the Orinoco near the most eastern point of its mouth and in a direction almost parallel to the coast. Point Barima is, therefore, bounded to the west by the river of that

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name, to the north by the Orinoco, to the east by the Atlantic, and to the south by impenetrable forests. Colonel Moody considers this position 'susceptable [*sic*] of being fortified so as to resist almost any attack on the seaside—the small depth of water, the nature of the tides, and its muddy shores, defend it. The Barima, and the uncultivated forests on marshy ground, present an impenetrable barrier against the interior, and debarkation from the Orinoco might be put under the fire of any number of guns—and the land reproaches [*sic*] on that soil could be easily rendered inaccessible to an invading force.'

"This is the importance which Colonel Moody in a military respect has attached to this point, and which, so far as my knowledge goes in this matter, is fully born out by personal inspection during my late survey of the entrance to the Barima.

"The Venezuelan Government, as at present organised, tottering in their interior relations, and embarrassed by a number of slaves who would hail the opportunity to shake off their fetters, hated and despised by the aborigines, whom maltreatment and cruelties have alienated, would be an insignificant enemy—but in the hands of any of the maritime European powers, matters would assume another aspect.

"France has attempted to establish a fortified position at the mouth of the Amazon near Macapa, which she claims as the eastern boundary of Cayenne. A settlement at this spot commands the commerce of the Amazon, and this no doubt, is the reason why this Power puts such importance upon its possession. Supposing that unforeseen circumstances should put France in occupation of Point Barima at the Orinoco, and that Macapa at the Amazon is ceded to her, she will then command the commerce of the two first rivers of South America, and hold the military keys of the northern provinces of Brazil and of the former Spanish provinces of South America, north of the equator, which territories will be always at the mercy of that power which commands the channels to their commerce.

"Finally, trusting to the prospects of prosperity and a continued emigration to British Guiana, there could not be a more favourable position for a commercial settlement than Point Barima. The capital of Spanish Guayana is Angostura, situated a distance of 85 leagues from the mouth of the Orinoco, and the intricate navigation of that river presents numerous difficulties to foreign vessels going up the Orinoco as far as Angostura.

"A commercial settlement established at the extreme point of Barima, where one part of the town would front the River Barima, and the other the Orinoco, would soon induce foreign vessels to dispose of their cargoes at the new settlement, and leave the further transport to the interior to

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smaller craft; naturally this premises the supposition that amicable relations and commercial treaties exist between Great Britain and Venezuela. The bar at the Barima admits vessels of 16 feet draft of water, which if once entered, may safely anchor in from 4 to 5 fathoms water. The peculiar formation of the fluvial system of the coastland between the Barima and the Essequibo admits an inland navigation, in punts and barges, to Richmond Estate, on the Arabisi Coast of the Essequibo, which with a few improvements might vie with any of the interior canals of England." (B. C., VII, pp. 33–34).

In line with the above are the following statements taken from three other of Schomburgk's letters:

"Taking namely the mouth of the River Barima as the place of departure; the line of demarcation ought to be directed to the mouth of the River Amacura, *in order to be able to insure the political importance which always would be attached to the mouth of the Orinoco,* and to prevent stragglers from escaping into the Republic of Venezuela." (B. C., VII, p. 5).

Again:

"A short distance above the mouth of the River Araturi is the Venezuelan Post Coriabo. The importance of this natural canal in a military or a commercial point of view is undeniable, but its importance to Venezuela (if a denser population should make it such) is rendered abortive in a military aspect if Great Britain possesses the right or eastern bank of the Amacura" (B. C., VII, p. 16).

Again:

"I have the honour to enclose herewith a memorial in which the grounds are recapitulated, chiefly with regard of Her Majesty's right of possession to the Barima—*a point of more importance to Great Britain than I have ventured to make it appear in my memorial.*" (B. C., VII, p. 34).

With such views regarding the mouth of the Orinoco, it is not surprising that Schomburgk should have gone beyond everything ever claimed by the Dutch, and that he should have dwelt at length upon and given importance to supposed historical facts, some of which were without foundation, and many of which were trivial in the extreme.

It is not the purpose of this Chapter to discuss those alleged facts. That will be done in other parts of this argument. For

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the present it will suffice to say that Mr. Schomburgk had very limited means for ascertaining the truth of what he asserted, and that many points which were formerly in doubt are now too clear to admit of discussion.

It may be worth while to point out in connection with Schomburgk's allegations of historical facts that while he was able to find, either in historical works or in current Indian traditions, statements which seemingly supported a Dutch claim to the Barima, he failed to find anything whatever to support his claim to the line around the great bend of the Cuyuni in the interior. Indeed, he found evidence of the strongest kind to contradict that claim, for he himself testifies that the Spaniards had "had a fortified post, called Cadiva, opposite the mouth of the River Curumu" (B. C., VII, p. 60), and, commenting on Lord Aberdeen's proposed line of 1844, he frankly said that he expected Venezuela would, because of that Spanish fort, object to that part of the line. He was certainly right in thus appreciating the importance of the Curumu fort. If "a small shelter" at Barima in 1684, which had erected without the knowledge or sanction of the Dutch West been India Company, which as soon as its existence had been reported to that Company had been ordered to be abandoned, which after a temporary occupation of at most a few months had been deserted and forgotten, and which had remained abandoned for over a century and a half, could be invoked by Great Britain to prove a Dutch title; surely a Spanish fort, authorized by the Spanish Government, erected on the southern bank of the Cuyuni by Spanish authorities, manned by Spanish troops, and maintained by Spain for the very purpose of asserting her sovereignty over that region, might not unwarrantably be invoked to prove a Spanish title.

It was in the face of this recognized Venezuelan right that Schomburgk ran his line past the remains of the old Spanish fort and around the great bend of the Cuyuni, leaving the very site of the Spanish fort within British limits. This is the line which

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until 1897, Great Britain refused to arbitrate, and with reference to which, in 1895, Lord Salisbury thus wrote:

"It is important to notice that Sir R. Schomburgk did not discover or invent any new boundaries. He took particular care to fortify himself with the history of the case. He had further from actual exploration and information obtained from the Indians, and *from the evidence of local remains*, as at Barima, and local traditions, as *on the Cuyuni*, fixed the *limits of the Dutch possessions*, and the zone from which *all trace of Spanish influence was absent. On such data he based his reports*" (V. C-C., vol. iii, p. 277).

Evidently the views entertained by Lord Salisbury in 1895 were not the views entertained by his predecessors in 1842, for upon no other theory can we explain the fact that this new line proposed by Schomburgk was not published to the world or communicated to Venezuela until 1886, that is to say, forty-four years after Hebert had completed the map now published on pages 38-39 of the British Atlas.

It will be remembered that when Lord Palmerston authorized the surveys proposed by Schomburgk, he had before him Schomburgk's map of 1839, with the line which, running apparently north and south, cuts the Cuyuni fifty or sixty miles west of the Essequibo. He also had before him the Memoir in which Schomburgk described *that* line. With that map and that Memoir before him, Lord Palmerston suggested to Lord John Russell "that a map of British Guiana should be made out *according to the boundaries described by Mr. Schomburgk*" (V. C., vol. iii, p. 77); and then added that the map thus to be prepared should, with an accompanying Memoir, be delivered to Venezuela, Brazil and the Netherlands, "*as a statement of the British claim*" (V. C., vol. iii, p. 77).

Schomburgk, having received his commission, made his surveys and prepared various maps, memoirs and reports. The line which he in part drew upon these maps, and in part suggested in his reports, was by Hebert transferred in full on to a map prepared by him for the British Government in 1842. This new line was not the line whose survey Viscount Palmerston had author-

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ized in 1840; it was not the line which he had suggested should be presented to Venezuela, Brazil and the Netherlands *as a statement of the British claim;* and the British Government, in 1842, with Hebert's map, with Schomburgk's map and with a number of Schomburgk's reports before it, recognized these facts, and, instead of presenting this new map and these reports to Venezuela, Brazil and the Netherlands, *as a statement of the British claim*, filed them away in its secret archives and kept them there for forty-four years.

But this is not the only proof which we have that the British Government, in 1842, refused to accept *as a statement of the British claim* that new line suggested by Schomburgk; and that, instead, it adhered to the north and south line of 1839. Let us look a little further into this matter.

It was in 1867 that Great Britain was first called upon to utilize the Schomburgk maps. In that year, according to the statements of the British Case, a tracing of Schomburgk's large "physical map" (British Atlas, maps 47–48), upon which Schomburgk had drawn no boundary whatever, was "made by Mr. Stanford for the use of the Colonial Government" (B. C., p. 143). Now, although no boundary appears on Schomburgk's original "physical map," it is clear, from what follows, that the copy of that map, which was prepared by Mr. Stanford, and which was by the British Government furnished "to the Colony in February, 1867, for the use of the colonial surveys" (B. C., p. 143), did have a boundary upon it. The surveyors in question were Messrs. Brown and Sawkins, who were employed to make a geological survey of the British Colony. Of course, in order to do this, they had to know how far the Colony extended, and hence a map of the boundary was furnished them by the British Government. Referring to the map thus furnished, and which could have been no other than that sent out for their use from London, Messrs. Brown and Sawkins use such expressions as these: "The boundary of Venezuela, *according to the map furnished us*," "as far as

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Ottomong River, which forms the boundary line between this Colony and Venezuela," "near the boundary line of the Colony, as drawn on Schomburgk's map." The report of Brown and Sawkins on the geology of British Guiana was published by order of the Lords Commissioners of the Treasury in 1875 (B. C., p. 143), and the map accompanying that report gives a boundary line corresponding substantially with the north and south line proposed by Schomburgk in 1839, and adopted in 1840 by the British Government "as a statement of the British claim." The geological features of this map, and its boundary line, were reproduced by one of the maps published by the United States Commission and reprinted in the Venezuelan Atlas as Map No. 2 (*see* also, same, map 90).

Where did the line which appeared on the map furnished to Messrs. Brown and Sawkins as a guide for their work come from? It was certainly placed there by authority. The map itself had been copied by Mr. Stanford in London from a Schomburgk map upon which no boundary appeared. The only conclusion to be drawn from these circumstances is that Mr. Stanford was directed by the British Government itself to place upon the map prepared for the use of the surveyors the line which Brown and Sawkins afterwards found on that map. By this action, and by its subsequent adoption of Brown and Sawkins' work, as evidenced by the publication of that work by order of the Lords Commissioners of the Treasury, the British Government for the second time since 1840 declared the north and south Schomburgk Line of 1839 to be the boundary of the Colony. That the British Government had in its possession at the time the Hebert map of 1842 and the various Schomburgk maps and reports which have since been published, merely proves that it had not yet given its assent to Schomburgk's proposals of 1842, and that it still regarded his *Expanded* Line of that date as too extravagant to adopt even as the British extreme claim.

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Another British official map was published in 1876. The British Case gives the following account of it:

"The third of these maps was prepared by Mr. Stanford in 1875, and published in 1876. It was prepared at the instance of the Colonial authorities, and had upon it the following note—

"NOTE.—*The boundaries indicated on this map are those laid down by the late Sir Robert Schomburgk, who was engaged in exploring the Colony during the years* 1835 *to* 1839 *under the direction of the Royal Geographical Society. But the boundaries thus laid down between Brazil on the one side and Venezuela on the other and the Colony of British Guiana must not be taken as authoritative, as they have never been adjusted by the respective Governments: And an engagement subsists between the Governments of Great Britain and Venezuela by which neither is at liberty to encroach upon or occupy territory claimed by both.*" (B. C., p. 144.)

This is the map published on page 41 of the British Atlas and as No. 88 in the Venezuelan Atlas. It was prepared by Mr. Stanford, the same who, in 1867, had copied the map furnished to Brown and Sawkins; as might be expected, this new map gave the Schomburgk north and south line of 1839 as the boundary of the Colony. The British Case informs us that the map was prepared "at the instance of the Colonial authorities;" and this, of course, stamps it as an official publication.

The note appearing upon the face of the map is most significant, and should be read in connection with our discussion in the Chapter preceding, on the subject of the extent of the territory in dispute in 1850. In that Chapter we assumed, for the sake of argument, that the Schomburgk Line, which marked Great Britain's extreme claim in 1850, was the *Expanded Schomburgk Line* of 1842; here, however, we have the evidence to prove that Great Britain's extreme claim at that time, and for at least twenty-six years thereafter, went no further than the line proposed by Schomburgk in 1839. No other interpretation can be put upon this note: its purpose is clearly to warn British settlers from going into the disputed territory, and to let it be known that the line

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claimed in the map was a *claim* only, and not a boundary which was accepted as settled.

This note has another significance. It states that "the boundaries indicated on this map are those laid down by the late Sir Robert Schomburgk." This is a distinct declaration by the Colonial authorities, at whose instance the map was prepared and published, that the line appearing on that map was a line which, at that time, the British Government regarded as *the Schomburgk Line*. That map, with that statement upon it, was in use for both official and private purposes for ten years before the British Government discovered that the *Schomburgk Line*, which had been proposed in 1839, which had been accepted by Lord Palmerston and Lord John Russell in 1840 as a statement of the British claim, and which the British Government had since that time treated as the extreme boundary of the Colony, was neither the *Schomburgk Line*, nor a statement of the British claim, nor the boundary of the Colony; it was at the same time discovered that another line, which had been proposed by Schomburgk in 1842, which Schomburgk himself in 1844 had regarded as extravagant, and which the British Government had, at that time, considered and refused to adopt, was after all the *only* Schomburgk Line, and the true boundary of the Colony. Can the British Government be permitted thus to contradict its previous statements, thus to brush aside the history of forty-four years, and by the stroke of a pen to thus add 10,000 square miles to her domain?

But we have not yet finished with this pregnant note. Why was it erased when, in 1886, the *original Schomburgk Line* was taken out and the *Expanded Schomburgk Line* substituted in its place? In 1886, and even as late as 1887, the British Government was still appealing to the Agreement of 1850 as yet in force; the note could not, therefore, have been erased because of any statement which it contained with reference to that Agreement, unless indeed Great Britain is ready to confess that it was no longer

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her intention to observe that Agreement, and that therefore she erased the note. The only other statement contained in the note, apart from the purely formal one that Schomburgk had been engaged in exploring the Colony during the years 1835–1839, was the statement that the boundaries on the map published in 1876 were those laid down by Sir Robert Schomburgk. The boundary which for ten years that note had declared to be the *Schomburgk Line* was now to be erased and a new line substituted. With the old line, therefore, disappeared also the old statement—and yet Great Britain maintains to-day that there is only one *Schomburgk Line*, and that the line first published in 1886 is that line!

After these various official publications of the *original Schomburgk Line* of 1839 as the boundary claimed by Great Britain, reference to other maps, published by persons who were in a position to know what Schomburgk's views were, and what the British Government claimed as a result of his surveys, would seem to be unnecessary. There were many such publications; we shall briefly refer to only one or two of them, but before doing so we stop to correct an erroneous statement of the British Case to the effect that as early as the date of Schomburgk's surveys the Venezuelan Government was notified of the *Expanded Line* and made remonstrance upon the subject. The following is the language of the British Case in this connection:

"The Venezuelan Government were aware of the position of the boundary posts erected by Schomburgk, and made remonstrances to Her Majesty's Government upon the subject.

"The line proposed by Lord Aberdeen in 1844, from the source of the Acarabisi to its junction with the Cuyuni and then along the Cuyuni to its source, corresponded with the line proposed by Schomburgk for that part of the frontier.

"From that time up to 1877 no definite proposals were put forward, and there was consequently nothing to call for any reference to the Schomburgk line. But in the first proposal made by Her Majesty's Government after the resumption of negotiations in 1881 specific reference was made to 'Schomburgk's original Map' and to 'the boundary line proposed by

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Schomburgk,' and the latter was described in terms which leave no doubt as to its direction. Moreover, the map illustrating the proposal, which was sent to the Government of Venezuela in Earl Granville's despatch of the 15th September, 1881, was a reduction of Hebert's Map, and gave the true Schomburgk line, with those variations only, in the vicinity of the coast, which were necessitated by the terms of Lord Granville's proposal." (B. C., pp. 144–145.)

In this passage the British Government alleges three sources whence Venezuela, prior to 1886, might have derived knowledge of Schomburgk's Expanded Line: the first was the erection of the Schomburgk boundary posts; the second Lord Aberdeen's proposal in 1844; and the third Lord Granville's proposal in 1881.

As regards the Schomburgk posts, we have to remark that the two great bends which characterize the *Expanded Schomburgk Line*, namely, the one around the head waters of the Barima, and the one around the Cuyuni to its source, were not marked by Schomburgk with any posts whatever, because he never visited either locality. A glance at Schomburgk's maps and at Hebert's map, British Atlas (maps 38, 39, 44, 46), shows that on the western boundary, after leaving the mouth of the Amacura River, the few boundary marks which Schomburgk fixed were all far in the interior where probably no one ever saw them. Such boundary marks, even if they had been known to the Venezuelan Government, would have been entirely inadequate to convey any notion of *Schomburgk's Expanded Line*, and therefore to cite these as a proof that Venezuela had knowledge of that line is hardly calculated to inspire confidence in the belief that any very conclusive evidence on that point can be adduced. The only posts to which Venezuela's attention appears to have been drawn were those at Barima Point, and at the mouth of the Amacura River; both of these points are on the *Schomburgk Line of 1839*, and hence these boundary posts could not have indicated that Great Britain claimed any other than that Line.

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Lord Aberdeen's proposal of 1844 was for a line starting from the mouth of the Moruca, thence to the Cuyuni by the Waini, the Aunama and the Acarabisi, and thence up the Cuyuni to its source and to Mount Roraima. It was on its face a compromise proposal, and Lord Aberdeen nowhere referred to any part of it as the *Schomburgk Line*. Clearly, then, the present British contention that Lord Aberdeen's proposal of that line to Venezuela was a notification to that Government of the *Expanded Schomburgk Line* cannot be sound; with equal reason might Venezuela contend that she herself had the right to regard the *whole* of the Aberdeen Line as the line proposed by Schomburgk; for certainly Lord Aberdeen, in describing his line, made no distinction between what was and what was not Schomburgk's; and in the course of the whole dispatch concerning this proposal Schomburgk is mentioned only once, when reference is made to the fact that on his visit to the Barima he had there found "traces of the entrenchment and surrounding cultivation," attributed by him to the Dutch.

Coming now to the dispatch of Earl Granville of September 15, 1881, we confidently affirm that it proves the very reverse of what Great Britain contends. As stated in the British Case, that dispatch to the Government of Venezuela was accompanied by a map which showed the line proposed by Lord Granville, which in the interior followed the great bend of the Cuyuni to its source, and which in that respect coincided with *Schomburgk's Expanded Line* of 1842. But the significant point of the matter is that Earl Granville, in the dispatch in question, not only failed to identify his proposed line in the interior beyond the junction of the Acarabisi and Cuyuni with the *Schomburgk Line*, but on the contrary, *distinguished* it from that line, and showed conclusively by the language he used that what *he* regarded as the true *Schomburgk Line* was a line different from that around the Cuyuni bend. This is the language in which Earl Granville defined that part of his proposed line:

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"Thence (that is to say, from the junction of the Cuyuni and the Acarabisi) along the left bank of the River Cuyuni to its source, and from thence in a south-easterly direction **To** the line as proposed by Schomburgk." (B. C., VII, p. 100.)

No man could have used that language if he understood that the line he was describing was the *Schomburgk Line* from the junction of the Cuyuni and the Acarabisi to the end. Lord Granville wrote the above in 1881; for forty-one years his Government had been treating the *Schomburgk Line* of 1839 as the only *Schomburgk Line* and as the boundary of British Guiana; it had authorized the geological survey of the Colony upon the basis of that 1839 boundary; it had published the great Colonial map of 1876 with that boundary upon it, and no other line would so naturally have been in Earl Granville's mind when he penned the above words. It was from the Acarabisi that his own proposed line was to run, and, having traced the Cuyuni to its source, that proposed line was then to turn in a southeasterly direction and go back **To** the Schomburgk Line. Can such language be held to be notice to Venezuela of the *Expanded Schomburgk Line* of 1842? And if it could, can the British Government explain why it waited from 1842 to 1881 to give that notice?

Having thus disposed of the claims now made by the British Case with regard to Venezuela's having had notice of the *Expanded Schomburgk Line*, let us once more return to the matter of publications, and see what light other maps throw on Great Britain's attitude from 1840 to 1886.

A full account of Sir Robert Schomburgk's boundary explorations was published at Leipzig, in 1847, in three volumes, prepared by his brother Richard, who accompanied him most of the way as botanist. The text of this work made no reference to boundary, but its map—stated in a note to have been prepared from Sir Robert's large map in the Colonial Office in London—gave the boundary line, declared by another note to be *the boundary claimed by Great Britain;* the line given is substantially the north and

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south line of 1839 (British Atlas, map 40). The British Case informs us that Richard Schomburgk had access only "to the map of the Colony prepared by his brother, showing merely the physical features." This may be so, and yet Richard Schomburgk's relations to Sir Robert were such that it would require strong evidence to convince an impartial judge that the line appearing on the Leipzig map received no inspiration from either Robert Schomburgk or from the British officials who permitted Richard to copy his brother's map at the Colonial Office.

Another map, which may be termed semi-official, is that published in the *Colonial Office List.* This *List* is published in London in serial continuity, and states on its title page that it is compiled from official records by permission of the Secretary of State for the Colonies, by Mr. John Anderson, an official of the Colonial Office. The edition of this *List* published in *March*, 1886, as also the prior editions, give Schomburgk's north and south line of 1839 as the western boundary of British Guiana (Ven. Atlas, map 86). The edition published in *December*, 1886, and all subsequent editions, give instead the *Expanded Schomburgk Line* (Ven. Atlas, map 86). Taking this in connection with all that has gone before, is it too much to affirm that the maps of this *Colonial Office List* must have had if not the formal approval, at least the quiet sanction of the British Government; and that these maps are to-day evidence of what the British Government claimed in and prior to 1886?

In the Atlas accompanying the Venezuelan Case are reproduced still other maps giving the Schomburgk Line of 1839. They are all maps for which, either directly or indirectly, either Schomburgk or the British Government must be held to be ultimately responsible. These are: the map printed in *Parliamentary Papers*, 1840, Vol. 34 (Ven. Atlas, map 32); the map in Schomburgk's *Description of British Guiana;* London, 1840 (Ven. Atlas, map 83); *Schomburgk's map, Leipzig, 1841* (Ven. Atlas, map 84); the Schomburgk map, reproduced from original in *Exposition Universelle de Paris, 1867*, Catalogue des produits exposes par la Guyane

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Anglaise, London, 1867 (Ven. Atlas, map 89); map by *C. Barrington Brown*, London, 1876 (Ven. Atlas, map 90), one of the surveyors employed by the British Government to make the geological survey of the Colony. In addition there are scores of others which it is not worth while to mention here.

To sum up: in 1839 Schomburgk proposed to the British Government to survey as a boundary of British Guiana the line appearing in his map of that date; the British Government approved that proposal, authorized that survey, and declared its intention of proposing that line *as a statement of the British claim;* Schomburgk, instead of surveying that line, surveyed another, or rather part of another, line which goes much further west, and suggested that new line to the Government as a *desirable* boundary; the British Government not only failed to approve Schomburgk's new proposals, but continued for forty-four years to adhere to the *original Schomburgk Line* of 1839. During that period Schomburgk's reports and his *Expanded Line* were kept secret, and every British publication, whether official, semi-official, or private, proclaimed as the western boundary of British Guiana the *original Schomburgk Line* of 1839. In 1886 the British Government published the *Expanded line* for the first time, declaring it to be the only *Schomburgk Line* and the boundary of the Colony. That Government thus reversed the action of all former British administrations for forty-six years, and comes into court to-day, asking this Tribunal to stamp its approval upon such a course of dealing.

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CHAPTER V.

THE GEOGRAPHICAL FEATURES OF THE TERRITORY IN DISPUTE AS BEARING ON THE QUESTION OF TITLE.

The territory in dispute comprises a considerable portion of the land lying between the Essequibo, on the east, and the Caroni, a tributary of the Orinoco, on the west.

The course of both the Essequibo and the Caroni is nearly due north; that of the Orinoco is nearly east and west. The main tributaries of the Essequibo are the Cuyuni and the Massaruni. The course of these rivers, with their branches, is also approximately east and west. As a consequence, it happens that the Cuyuni River System practically traverses in the interior the entire territory between the Essequibo and the Caroni, including the whole width of the territory in dispute.

The territory between the Essequibo and the Caroni is bounded on the north by the Orinoco and by the sea. To the north of the Cuyuni valley, which, as already stated, has an easterly and westerly trend, lies a range of mountains, defined on the maps with considerable clearness, which is known as the Imataka Ridge or Imataka Mountains. This ridge runs in general parallel with the Cuyuni and its tributary the Curumo in a northwest and southeast direction, across the whole territory between the Caroni and the Essequibo. Near its eastern extremity is a small spur or group of hills, known as the Blauwenberg or Blue Mountains. The range is sufficiently defined to form a clear division between the basin of the interior and the territory watered by the rivers which run north into the Orinoco and the sea.

In the discussion of the various districts in controversy in this Argument the region south of this range of hills is designated the Interior Territory, the region north of them the Coast Territory.

The physical features of the Interior Territory had a marked influence upon its history. Its extreme eastern border extends

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close up to the fringe of settlements on the Essequibo. This river runs in a line almost due north for a distance of over five hundred miles. Its mouth forms a large estuary, and in the lower part of its course it contains many islands. The rivers Cuyuni and Massaruni empty into it at a point about sixty miles from the sea. Just before reaching the Essequibo the two rivers unite.

The lower Essequibo is a large navigable river, though navigation ceases at no great distance above the mouth of the united Cuyuni and Massaruni. On the Cuyuni and Massaruni navigation is also brought to an end a short distance above the mouths of these rivers by falls or rapids. The Cuyuni is over 300 miles long. The lowest falls are about twelve miles from its mouth. In the Mazaruni the lowest falls are about ten miles from its mouth. The obstructions to navigation in the falls or rapids constituted a physical barrier, a natural boundary, beyond which settlement at no time passed, and it determined ultimately the development of the colony away from the upper waters and their tributaries.

The British Counter-Case dwells at great length (pp. 15–20) upon the character of the falls in these two rivers, with a view to show that they were not impassable. It objects to the name "falls," although that designation was invariably applied to them by the Dutch for more than a century, and although its own Atlas calls them "cataracts." It insists that they are not falls but rapids, and that they can be passed. The question is one of material importance, for the falls were one determining feature in the history of the Cuyuni. As to the character of the obstruction, no one denies that it was possible to pass it by taking the canoes overland, and sometimes by "shooting" the falls, though only at great risk. This, however, is not navigation, and a river which, is in the condition described is not a navigable river.

Whether the obstructions to navigation in the Cuyuni are known as "falls" or "rapids," and whether it was possible in some way and at some times to pass them, the fact remains as an incon-

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trovertible fact, that their presence was effectual in determining the limits of colonial development. Had the rivers been navigable highways, which they were not in any sense, they would undoubtedly have led to the establishment of some settlements or plantations above the point where settlements and plantations absolutely stopped.

The early plantations of the Essequibo colony clustered about the point where the union of the Cuyuni and Mazaruni with the Essequibo forms a small inland basin. On the four radiating arms of this basin, from the point of union as a centre, the entire settlement was established within a distance of twelve miles from the central point. For a long time the colony was nearly stationary, and when about 1734 it began to develop, the movement was entirely towards the mouth of the Essequibo. In 1740 the fort was removed from Kykoveral to Flag Island, and from that time on the old plantations in the neighborhood of the union of the three rivers were almost wholly abandoned.

It was well known that the land beyond the falls was adapted for cultivation, but at no time was there any movement towards settlement in that direction. This was due entirely to the obstruction of the falls. Of this fact there is abundant evidence.

The engineer Saincterre reported to the Company, March 19, 1722 (B. C. I, 252): "The ground is even better above in the Rivers Essequibo, Mazaruni and Cuyuni, than below; but because they are full of rocks, falls, and islands, and much danger is to be feared for large sugar canoes, this is the reason why up to this time the Europeans have not been willing to establish sugar plantations there," showing that no such plantations had yet been established.

The Court of Policy, in a letter to the West India Company, July 14, 1731 (B. C. II, 14) states: "The great number of rocks which lie in these two rivers, and which occasion the falls by reason of the strong stream rushing over them, makes these rivers unnavigable for large vessels, wherefore it is impossible to estab-

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lish any plantations there, although the soil is very well fitted for it."

In 1739 the Commandeur reported (B. C. II, 30), speaking of the prospecting for minerals in the Cuyuni above the falls:

"As the continuous rainy season . . . makes the road [*weg*] above the falls very dangerous, it has prevented the making of any further discovery—assuming that anything at all is to be found there."

Hildebrandt, the Mining Engineer, reported (V. C. II, 93) in 1741 that he "came to a great fall named Tokeyne, where we had great[er] trouble to get up than we had anywhere, the perpendicular height of the above named fall being 4½ fathoms [27 feet]. If I had not had the luck [to meet] six Indians who showed themselves helpful in dragging over my boat, I should have found it impossible to get up; and I kept these Indians by me still after they had helped me, in order to show the way further through the many islands and two other difficult falls."

And, again, in the following year (V. C. II, 94), he

"came to beneath the second great fall and saw almost no chance to get up, so was the water swollen, which in my former journey I could not get through; so that the additional Indians were very opportune for me, and it was dark by the time we had the two boats up above."

Even Schomburgk gives his testimony to the existence of these conditions and their effect upon the colony. He mentions one fall (B. C. VII, 28) as "called the *Canoe-wrecker*, in consequence of many fatal accidents which have occurred here." Speaking of the Camaria, one of the lowest group of falls in the Cuyuni, he said (B. C. VII, 29):

"As *it did not afford any portage*, we attempted to descend it in our craft. It nearly proved our destruction. As it was, the craft filled with water, and it was only the presence of mind of some of our crew to which, under the Almighty, we were indebted for our safety."

At the next fall, "Ematubba, generally called 'the Great Fall,'" he had to unload and haul his corials overland.

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His general conclusion in reference to the Cuyuni is thus stated (B. C. VII, 30):

"But the difficulties which the Cuyuni presents to navigation, and those tremendous falls which impede the river *in the first day's ascent*, will, I fear, prove a great obstacle to making the fertility of its banks available to the Colony. The Amacura, Barima and Waini, are, for a great distance, free of such impediments."

Even the Indians were not exempt from these accidents. In 1778, Director-General Trotz recorded the fact (B. C. IV, 190) that an Indian Owl named Taumaii, in descending the river, "had the mischance to go down the first fall with his vessel, whereby all his goods were lost," and that a friend who accompanied him was drowned.

A word of comment must be given to the evidence upon which the British Counter-Case contends that the falls so described in other parts of its evidence are not obstructions to navigation. It relies upon an affidavit of Mr. McTurk, Stipendiary Magistrate of the colony of British Guiana, and of all its officials the most zealous promoter of extended frontiers. The examination will be valuable at this early stage of the Argument as showing the value of Mr. McTurk's depositions in general, a subject to which we shall have occasion to refer more than once at a later stage. Mr. McTurk's affidavit (B. C.-C. App., 403-5) was made June 14, 1898, for use in this arbitration. He undertakes to make two points: First, that the falls of the Cuyuni are not very difficult or dangerous; and, second, that the most difficult falls are not in the lower, but in the upper part of the river. Unfortunately for Mr. McTurk, the evidence annexed to the British Case contains several of his reports, made before it was supposed that the boundary question would be submitted to arbitration, and these reports contain evidence quite at variance with that of his later deposition. In order to show the difference between Mr. McTurk reporting the facts to his superior officer and Mr. McTurk

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making a deposition to be used in this arbitration, they are printed in parallel columns.

(1.) *As to the Difficulties and Dangers of Navigation.*

Deposition 1898.

"The falls and rapids on the Cuyuni, Massaruni, and Essequibo, although difficult and tedious to pass, offer no insuperable difficulties to navigation, which is conclusively shown by the number of boats which annually pass up and down, and in those cases where accidents have occurred it has been on account of the carelessness or incompetency of those in command of the boat."

Report of Descent of Cuyuni 1891. (*B. C. VI*, 248–9).

"On the 14th the boat went twice on the rocks, the first time splitting the larboard streak, and the second time pitching me out, when I got a number of bruises. This was through no fault of the steersman, but because we came so suddenly on the rocks round points above them. We then had to clear a road across an island about 400 yards long, lay rollers, unload, and haul the boat over. This occupied nearly half a day. At 12.30 P. M. we started for the other side.

"The appearance of the river from the lower side of this portage was most appalling; as far as the view was clear the river was a seething mass of broken water, with numerous whirlpools and pointed rocks showing between the waves. We all viewed them with dread, knowing we had to pass over them somehow. Placing myself at the highest part of the lading with the glasses, I directed the steersman, and by alternately running and lowering, at 1 P. M. came out into clear water, finishing one of the most dangerous passages through falls it has been my lot to experience.

"On the 16th January we had to unload and haul over the boat twice owing to the size of the falls swollen

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by the rains, and again once more on the 17th. On this morning the boat was flung bodily on to a rock by the bursting up of the water, the uprising of the accumulated water from below. One man, who was standing up at the time, was thrown several feet clear of the boat, and was driven down the fall, but clung to some bushes below. We jumped on the rock, and at the next uprising of the water the boat swung round and floated off; one man not jumping in in time was left on the rock. As soon as we acquired control over the boat, we picked up the men holding on to the bushes, and went as near as we could to the other on the rock, about 40 yards off, as we could get no nearer; he was motioned to swim, and I stood ready with a rope to throw to his assistance; he jumped in and reached the boat safely. We arrived, without further mishap, at the penal settlement at 10.30 A. M."

Report January 23, 1890.
(*B. C. VII*, 325.)

"9. There have been several accidents during the year, and in many cases attended with the loss of life."

Report February 17, 1891.
(*B. C. VII*, 327.)

"As in last year, there have been several accidents on the rivers, and a deplorable loss of life."

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Report August 5, 1895.
(*B. C. VII*, 335.)

"The steersman ran the boat into a fall dangerous at all times, but especially so in the then state of the river; in each case the result was the same—a lamentable loss of life."

Report September 7, 1891.
(*B. C. VI*, 253)

"If it is decided that a station is to be put up at the mouth of the Uruan, the matter must be taken in hand while the dry weather lasts, as it is not only a very laborious but dangerous undertaking to ascend the Cuyuni at any other time."

(2.) *As to the comparative extent of obstructions in the upper and lower Cuyuni.*

The proposition here is thus stated by the British Counter-Case (p. 16), on the strength of Mr. McTurk's deposition:

"In other words, the obstacles to navigation on the Cuyuni below the Uruan are distributed along the whole course, and are not, as the Venezuelan Case suggests, confined to the lower part, *where indeed they are less formidable than further up.*"

The sole authority cited for this statement is Mr. McTurk's deposition. In the columns following this deposition is compared with his previous reports:

Deposition 1898.
(*B. C-C. App.*, 403.)

"The suggestion in the Venezuelan Case that the falls and rapids in the Cuyuni render it almost impossible to traverse from the Essequibo end, and that these rapids and falls constitute a natural barrier against any one ascending the river

Report February 16, 1889.
(*B. C. VII*, 322.)

"The lower part of the Cuyuni is very much obstructed by falls, which though not so numerous as those on the Mazaruni, are larger and tortuous in their course. The latter circumstance adds to the difficulty and danger of getting over them. Beyond

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from its mouth while leaving the upper part of the river above these falls easy to traverse, is entirely erroneous. As a matter of fact, the falls and rapids occur throughout the whole distance between the mouth of the Cuyuni and the Uruan, and it is not correct to suppose that the most difficult falls are those nearest its mouth."

the falls at Womopoh the river is clearer, the falls being small and considerable distances apart."

Report January 20, 1891.
(*B. C. VI*, 247.)

"On the 1st January we came out from among the islands into the open river above Kanaima falls."

Kanaima is about half way between Uruan and the lowest fall in the Cuyuni. Womopoh is two days below Kanaima. In the report last cited Mr. McTurk mentions the passage on his way up of twenty-one falls before reaching "the open river above Kanaima falls." He does not mention one between there and Uruan, a distance of over one hundred miles. On his way down he does not mention a fall above Kanaima, and his experience below that point is quoted in the first series of parallel columns.

On Map 1 of the British Atlas sixteen cataracts, portages, rapids, and "great cataracts," are mentioned by name below Kanaima, while only two of this class of obstructions are mentioned above.

If McTurk's deposition is not sufficiently contradicted by McTurk's reports, the following statements of British officials are a conclusive answer.

Hilhouse, who had been for many years in the colony, and had held a high Colonial office in connection with the Indians, ascended the Cuyuni in 1837, and stated that he ascended fully 77 feet in the first day (V. C., p. 29, note). He added:

"It is evident that colonization can never be attempted on this river: the first day's journal determines that."

Mr. Perkins, the Government Surveyor of British Guiana, said in 1893 of the Cuyuni (V. C., p. 30):

"It has long been known as amongst the most dangerous, if not *the* most dangerous, of all the larger rivers of British Guiana, and there are

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times when the height of its waters, either above or below a certain point, gives it every right to claim this unenviable notoriety. My first experience was a highly unpleasant one in 1877. . . . In coming down stream our boat capsized at the Accaio—the lowest fall in the river—where one man was drowned and everything was lost."

An important point in the phraseology of the Dutch records is here to be noted. It has been said that the plantations of the colony of Essequibo proper, during the first century of its existence, extended around the water basin formed by the junction of the three rivers, with their four arms, namely, those of the Essequibo, the Massaruni and the Cuyuni as far as the obstructions of the falls and on the lower Essequibo to an undefined distance in the direction of the sea. The general designation used by the Dutch authorities in referring to the plantations on the Cuyuni and Massaruni in this circle around the water basin and below the falls was "in Cuyuni," or "in Massaruni." A plantation "in Cuyuni" meant a plantation between the Cuyuni falls and the mouth of the river. A plantation "in Massaruni" meant a plantation between the Massaruni falls and the mouth of the river. Later, when the trend of the settlements in Essequibo was toward the river mouth, and all but a few of the upper plantations were abandoned, the fort being moved 30 miles lower down, it became customary to speak of these localities below the falls as "up in Cuyuni," or "up in Massaruni."

This phraseology is important, in view of the loose manner in which the phrases "in Cuyuni" and "in Massaruni" are used in the British Case. Their use there would seem to imply that they had reference in the Dutch documents to the upper waters of the two rivers. Such is not the fact. The expressions were used habitually in reference to the settlements about the river mouth, and those only.

Thus the British Case (p. 15) says:

"The timber in the forests of Massaruni, Cuyuni and Waini was granted out by the Government for felling."

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No timber grant was ever made in Massaruni or Cuyuni beyond the falls.

Even in 1880, im Thurn says (V. C., vol. iii, p. 407):

"It is at present impossible to cut timber profitably beyond the cataracts [on the various rivers], owing to the difficulty of carrying it to market."

Again (p. 29) the Commandeur is reported as stating that "he has 'again begun to make here a new plantation, in the River Cuyuni above the fort.'"

Here the reference is to the same portion of the river below the falls.

The British Case states (p. 35) that a settlement of "a novel kind was established in an island in the Cuyuni," referring to the creole settlement. This, again, was below the falls.

It also speaks (p. 36) of several grants of land "in Massaruni" and "in Cuyuni," possibly half a dozen. There never was a grant of land by the Dutch above the falls of either the Cuyuni or the Massaruni.

The existence of the falls in the Cuyuni and Massaruni was the determining factor in the history of the river-valleys.

The Eastern border of the interior territory where it approaches the Essequibo, is rugged and at the period in question was covered with a dense forest. The rivers which would otherwise have constituted natural highways of travel were closed to navigation. The difficulties of access on this side were such as to determine the relations of the Dutch colony of Essequibo to this territory. No settlement ever penetrated beyond the natural boundary made by the falls. No body of soldiers from the garrison ever passed this boundary. Neither the Governor, the Secretary, the commandant of the garrison, or any other officer, except the postholder, ever set foot in it. The only other Dutchmen who ever passed the falls from Essequibo were isolated individuals, and these only on occasional visits. The only persons connected with the Dutch colony

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that are ever mentioned as passing this barrier are the Company's old negro traders, the Outlier, who was for a short time in the Cuyuni, the two Byliers who were employed at the same post, the Outrunners, who went to trade with the Indians, and occasional individuals trading on their own account.

On the other hand, the western side of the interior district, which immediately adjoined the Orinoco, was open country, separated from the valley of that river only by low hills, which were freely passed and repassed by the Spaniards from the provinces of Cumaná and Barinas, across the river, and from the capital of Santo Thome, on the eastern side of the river itself. This open country consisted of plains, prairies or savannas, as they were called, admirably adapted for the pasturage of cattle. The existence of these immense savannas determined from the beginning the great product of Spanish Guiana, namely, cattle, horses and hides; and it was over these savannas that the Spaniards passed to the Cuyuni.

The Spaniards, descending the slopes of the low hills that bordered the Orinoco valley, established themselves and their herds in the immense district watered by the tributaries of the Cuyuni. Their missionary efforts among the Indians, which had begun in the seventeenth century under the royal direction, in the early part of the eighteenth resulted in the planting of settlements, of which the first, that of Suay, commonly known as Purisima Concepción, was in the immediate neighborhood of Santo Thome, and became the residence of the Prefect of the Missions. During the century a great number of these settlements were established, the earliest of them not far to the southward of Suay, until they filled a vast extent of territory. Some of these were towns with a mixed population of Indians and Spaniards, such as Upata and Guasipati; some of them were enormous cattle farms, such as Divina Pastora; some of them were settlements of Indians exclusively, in charge of missionaries, where the Indians

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erected houses, dwelt and labored and, abandoning their wandering life, were taught the cultivation of the soil and the practice of useful arts. At these settlements were soldiers from the Spanish garrison of Guayana, and at one of them, that opposite the mouth of the Curumo, on the south bank of the Cuyuni, there was a fort with a garrison of its own.

That the accessibility of this territory from the west necessarily resulted from the character of the country is shown by the evidence.

The English engineer Barry, who visited the gold mines near Guacipati, by the usual route from the Orinoco, describes the character of this region (V. C., p. 32), where the traveler "emerges on open tracts of moderate extent not bare, but diversified by clumps of trees dotted about, while the rolling ground reminds him of the most beautiful parts of English country scenery. Park, as it were, succeeds park, till he is at last fairly puzzled where to select to encamp, among so much contented and rival loveliness, and here, at a nominal rent, the cattle breeder may come and establish himself, with the certainty of realizing thirty per cent. per annum on his outlay."

In another place, he describes the country as "vast undulating plains of waving grass, dotted at intervals with clumps of splendid trees. . . . Occasionally a thin belt of forest marked the course of a stream."

The British Counter-Case relies on Mr. McTurk's deposition (B. C.-C. App., 403) to dispute the facility of access to the Cuyuni valley from the Orinoco. As a matter of fact, its accessibility is proved, though unintentionally, by Mr. McTurk's statement.

While he says:

"These savannahs do not touch the Upper Cuyuni,"

he adds that it is only

"a day's journey on mules to the edge of the savannah, or about 30 miles."

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One could desire no better evidence of facility of access than this. The distance from Santo Thome to the Cuyuni at Uruan is 150 miles, of which 120 is the "open park" described by Barry, and the remaining 30 is traversed on mules through the forest in one day.

For a hundred miles further below Uruan the Cuyuni is "the open river above Kanaima falls" described by McTurk.

It is this point to which particular attention is directed here, namely, the accessibility of the region from the west, not only to the Cuyuni, but along the Cuyuni valley, as contrasted with its inaccessibility from the east. The district was well watered by the tributaries of the Cuyuni. But such was the character of the land that it was unnecessary to use the streams for purposes of transit. In this whole territory transit was easily effected by land.

In view of these facts, which were part of the physical geography of the country, it is not surprising that, while the interior territory was the subject neither of settlement nor of control by the Dutch from its eastern side, it was subject throughout the whole period to very extensive settlement and control by the Spanish from its western side. As to the Spanish settlements themselves, it is enough to say that by the close of the century they numbered upwards of thirty; that their herds of cattle numbered two hundred thousand, and that the population of Indians living directly under the supervision of those in charge of the settlements numbered upwards of twenty thousand.

As to control, while no Dutch official, except possibly the Postholder, ever set foot in the territory, it was repeatedly visited and patrolled by Spanish officials in command of detachments of men from the Spanish garrison. These will be more fully spoken of when we come to discuss the subject of control.

Attention is here directed not only to the point that the falls of the Cuyuni and Massaruni make a natural boundary for the colony, but that the ridge through which they break in their

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descent indicates a natural line of geographical demarcation for the district beyond. The fact of this "break" in the mountains is stated in the Venezuelan case (p. 29), and emphatically denied in the British Counter Case (p. 16). Yet it rests upon no less an authority than Schomburgk who, whatever may have been his ignorance of public law, must at least be admitted by Great Britain to have been a geographer. He refers to his "descent of the third series of falls, caused by a small range of mountains, through which the river has broken itself a passage." (B. C., VII, 29). The river falls 200 feet in thirty or forty miles, and it is this range through which it breaks that forms the eastern boundary of the Interior Territory.

This district has been spoken of in the Venezuelan Case as "the Cuyuni-Mazaruni Basin," a term to which the British Case takes exception. It cannot be denied, however, that its character as a basin is distinctly marked. Starting about twenty miles from the Orinoco, at the western end of the Imataka Ridge, which crosses the territory in dispute from northwest to southeast, the line of demarcation turns sharply to the southward, midway between the fifty-ninth meridian and the Essequibo, and follows the range of mountains through which the Cuyuni and Massaruni break at the falls; thence passing up the latter river it crosses over by the watershed separating the tributaries of the Amazon from the rivers of the north, and finds its way back to the point of departure by the mountains which border the Caroni on the east. That there are in the interior of this country small mountainous areas is undoubted; but these lie to the south of the Massaruni, where they form isolated points of elevation, and do not affect the general character of a single geographical district. That this district was penetrated by the Spaniards and possession taken of it at an early date, long in fact before the Dutch were ever heard of in the country, has been already shown; in fact, the Spaniards could not go twenty miles south of Guayana Vieja, the second site of Santo Thome, without

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penetrating it. According to the Venezuelan Case (p. 32), the usual length of the journey from the mouth of the Caroni to Guacipati, more than half way to the Cuyuni, was but three days on horseback; and the country was as accessible in the time of Berrio and Vera as it was when Barry made the journey.

The British Uruan police station, according to the authorities cited (V. C., p. 31), can only be reached by a "very hazardous and long journey of forty or fifty days," and it costs the Government "an immense annual sum to maintain their small number of police at Yuruan on salt and tinned provisions (sent all the way from . . . the Essequibo, in paddled boats);" while, "within 200 yards on the other bank of Kuyuni is the Venezuelan outpost, supplied with all kinds of fresh food from their cattle farms and plantations," and "in direct communication with their capital by road and wire."

The claim made by the the Dutch to this region was a claim to "all the branches and tributaries which flow into it [the Essequibo], and especially of the northernmost arm of the river named Cuyuni" (V. C. II, 134). It was, therefore, a claim over the vast territory covered by the mission settlements up to within twenty miles of the Orinoco. It was based on the possession of settlements which were wholly below the falls. In other words, it was a claim to extend as against a prior holder, whose prior title was recognized, a posession of a dozen miles of the course of the river to the whole extent of the territory watered by that river, three hundred miles in length, to say nothing of its tributaries.

The principle upon which, apart from any question of prior titles and adverse holding, title to such a region as the Cuyuni basin depends is the principle of natural outlets. The only reason why the possession of those at the river mouth is held to carry with it a possession of the territory above is, as stated by Twiss (Oregon Question, p. 247), "because their settlements bar the approach to the interior country, and other nations can have

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no right of way across the settlements of independent nations." So Phillimore (Int. Law, § 288): "The right of dominion would extend from the portion of the coast actually and duly occupied, inland so far as the country was uninhabited, and so far as it might be considered to have the occupied seaboard for its *natural outlet* to other nations." Where is the natural outlet of the Cuyuni valley? and where is its natural barrier? This question is one of geography, and its answer lies in the wall which nature has erected on the east and in the great stretch of gently sloping prairies and savannas on the west.

In view of the above facts, it is well that the British forbear to press their "extreme claim," which includes the whole valley of the mission settlements. As an alternative proposition, they fall back on the Schomburgk line, which makes the upper Cuyuni the boundary from the Acarabisi to its source. As far as natural frontiers are concerned, this line is no better than the other. It is not only the accessibility of the mission valley from the Orinoco upon which we have dwelt, but the accessibility of the Cuyuni district through the mission valley to the Orinoco. The theory that the Cuyuni here makes a natural boundary is untenable. As is well said by F. de Martens (Int. Law, pp. 456-7):

"Correctly speaking, rivers have never formed natural obstacles between nations. On the contrary, the masses of population in the basins of the principal streams show that they served rather to draw people together, even in former times. This is still more true of modern times. Streams that traverse many States are, in every sense of the word, arteries of international communication. It may be said, then, of water-courses that serve as frontiers: First, nature herself has predestined them to unite rather than separate States; second, the right to navigate them, guaranteed by treaties, results, moreover, very naturally, in some difficulty in determining the territorial jurisdiction over the water-course by the countries so bounded; third, to establish this line of demarcation, it is indispensable that the States having such boundaries should arrive at a complete understanding.

"The preceding fully demonstrates that, in reality, a water-course can only serve as an artificial and conventional boundary, but in no sense as a

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natural one. As to the strategic importance of streams and rivers, that is incontestable."

The Coast Territory, between the Orinoco and the Moruca, while its physical features seem at the first glance to be in direct contrast with those of the interior, was similar in one essential particular, that the natural access to the territory was from the west and not from the east. The territory is separated from the district which has just been discussed by the ridge of hills known as the Imataka Ridge, running north-west and south-east from the Caroni to the Orinoco.

Of the rivers in this district four of the principal streams, the Imataka, the Aguirre, the Amakura, and the Barima, empty into the Orinoco, and one, the Waini, into the ocean.

The further fact to be noticed is that the rivers in this district all flowed to the west. In the Interior district the course of the rivers was to the east. In the interior, however, the rivers were not navigable from their mouths, being virtually closed a few miles above the mouth by impassable rocks and rapids. In the coast territory no such obstructions to navigation existed.

Another difference between these rivers and the rivers of the interior lay in this, that the rivers of the interior, running east, took their rise in the extreme western part of the territory in the neighborhood of the Orinoco; while the rivers of the coast, running west, did not, on account of the curvature of their course, take their rise in the eastern part of the territory near the Essequibo. Hence, although the interior rivers were accessible through their headwaters to the Spaniards, the coast rivers were not in the same way accessible to the Dutch. The source of most of the coast rivers, in fact, was much nearer the Orinoco than the Essequibo, while that of the others was close to the district in which lay the outermost mission settlements of Spain. The principal rivers of the interior, the Curumo and Yuruari, with their continuation in the Cuyuni, extended through the whole territory, beginning at a point less than forty miles from the Orinoco and three hundred

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miles from the Essequibo. The rivers of the coast territory, running first north-east and then north-west, never approached the Essequibo at all. So that in both regions the rivers were alike inaccessible from the east and accessible from the west.

The merest inspection of the map shows that all the rivers of the coast district are a part of the same river system. They rise in the same range of hills, they follow the same line of curvature in their course, and they empty into the stream of the Orinoco. They thus form four concentric water courses, the line of curvature merely expanding from the innermost arc of the Imataka to the outermost of the Barima. The Waini belongs to the same system, but the sweep of its curve reaches the coast east of the Orinoco, and at this point it has found its way to the sea.

Singularly enough, however, the Waini, a short distance before it reaches the sea, is connected with the Barima by a deep navigable channel only a few miles in length, a channel through which the tide ebbs and flows and which at all times affords a passage for large ships. This is the celebrated Mora Channel or Mora Passage, and its existence, by rendering the Waini as accessible from the Orinoco as the Barima itself, and by subjecting it to the same influences of tides and currents, brings the Waini directly into the Orinoco system.

It is also to be noticed, with regard to these tributaries of the Orinoco, that none of them are obstructed to the slightest degree by falls or rapids except in their upper reaches. Schomburgk (B. C. VII, 12) describes the Barima as 700 feet wide, with a depth of 18 to 24 feet, and he says (*Id.*, 13): "A finer river for steamers could not be desired." All of them are distinctly navigable rivers. In fact, their navigability is the one physical fact that is of cruical importance in the history of this region, just as the impassable character of the Cuyuni and Massaruni, due to the obstruction of the falls, is the crucial physical fact in the history of the interior district. So far as physical conditions were con-

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cerned, the navigability of these tributaries of the Orinoco determined the history of the coast district for two centuries. In the same way, with reference to physical conditions, the non-navigability of the Cuyuni and Massaruni determined during the same period the history of the interior district. The two facts, taken together, afford a perfect explanation of the fact that, apart from political considerations, the river system in the Interior Territory was destined to be controlled from its headwaters, and the river system in the Coast Territory from its point of discharge.

The natural gateway to the Interior Territory was from the headwaters of the river, while the natural gateway to the Coast Territory was from the lower waters of the river; but in both cases it was from the west.

Another noticeable fact in connection with the coast territory is to be found in the "*itabos.*" These are shallow passages or ditches through the savanna, and connect at different points the tributary creeks of the large rivers. They are only useful for navigation by canoes and other small boats. They are kept open more or less by artificial means, and during a considerable part of the year cannot be used at all. Most of these, such as the itabo called Morebo, which connects the tributary creeks of the Barima with those of the Waini in the interior, and a similar chain of passages between the Aruka and Amakuru, have no special significance. By means of these creeks and bayous, it was often, though not always, possible to make a short cut between the upper waters of the rivers of the coast territory, only, however, in boats of the lightest draught.

There was one itabo, however, which crossed the savanna between the Moruka and a system of creeks called the Biara and Assacatta, which emptied into the Baramani, which in turn emptied into the Waini. This itabo formed the only natural connection between the Moruka and the west. Great reliance is, therefore, placed upon it by the British Case as showing a natural means of access to the territory commonly known as Barima from

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the Essequibo. It was, however, a very uncertain reliance. The savanna was about six miles in width, and this was the only passage through it. Moreover, it did not connect with the Essequibo. From that river it was necessary first to go by sea to the mouth of the Moruka, thence proceeding up that stream, and finally to pass through the itabo, when the itabo was passable. Even from Pomeroon, it was usual to go to the mouth of the river and pass by sea to the mouth of the Moruka in order to get through; and from Essequibo in the Dutch period it was customary to go round Cape Nassau for the purpose. The passage through the itabo seems to have been peculiarly liable to interruption. It necessitated, when coming from Essequibo, a voyage partly by sea, and it was the only means of access into the district. On the other side, however, any one could start from the Orinoco in a vessel of almost any size and range freely through the whole district as far as the Moruka itabo without going outside at all.

There is abundant evidence, both Dutch and British, as to the accessibility of the Coast Territory on the west from the Orinoco, and its inaccessibility on the east from the Essequibo. Thus, in 1839, Crichton, the British Superintendent of Rivers and Creeks, making his first journey to this territory from Pomeroon, "learned also that I could not proceed through the savannah, as it was almost dry and totally impassable except for very small corials" (B. C., VI, p. 68). He therefore returned down the creek, proceeded by the sea coast, and entered the coast territory from the sea. On his return, notwithstanding the heavy weather and that he was "in repeated danger of being swamped," he again took the sea route (B. C., VI, p. 72), "as the inland communications were all nearly dry."

Still more emphatic is the testimony of Superintendent McClintock in 1848 (B. C., VI, p. 171), who said:

"The want of a canal through this part of Upper Morocco forms a complete barrier for several months of the year to all communication with the

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Rivers Winey, Barima and Oronoco, thereby cutting off, although for a time only, that intercourse so essential to the general welfare of the Pomeroon District."

Mr. im Thurn, the able and efficient British Government Agent in charge of the existing Northwestern District, who has had twenty years' experience in the colony, says (V. C., p. 27) of what he calls "a narrow itabbo or artificial water-path, which connects the Moruka with the Waini River":

"This connecting passage is in all about 30 miles in length; but only about the first 10 miles of this is actually semi-artificial itabbo, made by the constant passage of the canoes of the Redman through the swampy savannah. . . .

"We found the itabbo section of this passage very difficult to get through. Generally, it was hardly wider than the boat, and its many abrupt windings added to our difficulties. . . . We had either to force the boat under the low-lying branches or make a passage by cutting them away. On either side of the channel the ground is so swampy as hardly anywhere to allow foothold of even a few inches in extent. . . .

"This itabbo is quite dry in the longer dry seasons, and is then, of course, impassable; for walking along its banks is out of question—a circumstance which has a good deal to do with the fact that the parts beyond had up till then been almost completely shut off from the rest of the colony."

The principles which have been already stated in discussing the legal effect of geographical features in the interior district apply with equal force to the coast. As has been already stated, the question is a question of natural outlets. Is the natural outlet of the Amakura and the Barima, and even of the Waini, which is to connect those rivers with the nearest trade centres and with the rest of the world, through the broad and deep channels at their mouths, into the Orinoco, or is it through an artificial water-path thirty miles long, "hardly wider than the boat," which during a great part of the time is wholly impassable? These last are the features of the only outlet from the coast territory to the Essequibo, according to the highest British authority, the Government Agent

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for the district. To which river system are these great water courses and the territory through which they flow naturally appurtenant? This admits of but one answer.

Close the itabo permanently and it will have no appreciable effect upon this district. Is it to be supposed that anybody goes now by that route in preference to going outside by steamer? This immense territory is in no way dependent upon the passage through the savanna.

We cannot close this discussion without calling attention to the grossly misleading character of Map 3 of the British Atlas, which purports to show the water-basins. The author of the British Case has chosen to unite the basin of the Cuyuni and Massaruni with that of the Essequibo. Of this we do not complain, because it is, perhaps, well to show in this graphic way how the application of the watershed theory makes in the British view of this case the possession of the island of Kykoveral extend constructively to the banks of the Orinoco. It also shows to what impossible results the watershed theory would lead if it were applied, as the law forbids it to be applied, to lateral frontiers. The point with which we are particularly concerned, however, especially in view of the definition given to the so-called "Essequibo basin," is that given to the Orinoco basin. While every tributary of a tributary of the Essequibo is carefully included in the "basin" of that river, one of the most important tributaries of the Orinoco is excluded from the Orinoco basin, and the Barima is joined with the Waini as if it were a tributary of the latter. The Barima certainly is a tributary of the Orinoco. If the Waini is a tributary of the Barima, it is also a tributary of the Orinoco. If they can be united by a common outlet, they form an integral part of the basin of the Orinoco.

A discussion of the principles of law bearing upon natural features is unnecessary in this case, because they have no application where the question, as here, is of establishing title by adverse

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holding. They have only been mentioned in order to emphasize the fact that the physical features of the territory in dispute make it a natural appurtenance of the Orinoco rather than of the Essequibo, and because at various times in the history of the controversy, chiefly through the West India Company's ignorance of this fact, some claim inconsistent with it has been made. In the case of an adverse holder, however, all these grounds of constructive possession are denied. He takes only that which he actually holds; and whether the natural outlet is through him or through the holder of the prior title, it can avail him naught.

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CHAPTER VI.

SPANISH TITLE—DISCOVERY.

We now address ourselves to a discussion of the territorial titles of Spain and Venezuela, on the one side, and of the Netherlands and of Great Britain, on the other, in Guiana.

Venezuela asserts a title to the territory in dispute, based upon the discovery of Guiana by Spain. Guiana had become a known and defined geographical district, by the name of the "Province of Guiana," before the earliest Dutch voyager touched its shores.

Antonio de Berrio, writing in 1593, speaks repeatedly of "Guiana," and gives its bounds thus:

"These great provinces lie between two very great rivers, namely, the Amazon and the Orinoco"* (B. C., I., p. 5).

In the anonymous petition to the States General, assigned by the British Case to the year 1603, we have this description of the "Province of Guiana":

"The Province of Guiana, situated in America, lies upon 4, 6, and more degrees north of the equator, extending from the great River Amazon to Punt della Rae or Trinidad" (B. C., I., p. 24).

From this we learn that, before the Dutch had entertained a thought of going there for settlement, the bounds of Guiana were well known to them, and that it had come to be called a "Province," a name that does not appropriately describe an unappropriated country.

But we do not need to follow the evidence found in the cases of the respective governments, in order to establish our point that Guiana, at the time of its discovery and settlement by Spain, was a distinct geographical unit, having natural boundaries as

* The region was described by Domingo de Vera as "the noble prouinces of Guiana and Dorado" (V. C., vol. i., p. 39).

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distinct as those of an island—for all this is most forcibly stated to be true in the British Case. It is there said:

"Guiana, as understood by historians and geographers, comprises the territory bounded by the Orinoco, the Cassiquiare, the Rio Negro, the Amazon, and the Atlantic Ocean, whence it was often spoken of as the Island of Guiana" (B. C., p. 6).

Major John Scott, who is given credit by the presentation in the British Case (I., p. 167) of a report ascribed to him, upon Guiana, and attributed to the year 1669, speaks of Guiana as a "province" bounded on the southeast by the Amazon and on the northwest by the Orinoco, fronting 230 leagues on the Atlantic Ocean, and says these rivers meet in the interior. He therefore calls it an "island." The area embraced within these bounds is about 690,000 square miles.

And yet in the British Counter-Case (p. 137, par. 2) we have this remarkable statement:

"There was no province of Guiana, and no defined tract of territory to which Spain became entitled by virtue of her settlement on the Orinoco."

It is admitted by Great Britain that this distinct, well defined geographical unit, called Guiana, was discovered by Spain. We quote:

"It is admitted that Spain was the first nation to discover Guiana" (B. C.-C., p. 130).

These admissions might be fairly taken to relieve the counsel of Venezuela from the duty of referring to any of the evidence bearing upon the subject of the discovery of Guiana by Spain. But we prefer to call attention briefly to a few of the Spanish voyages to the coasts and rivers of Guiana, and of Spanish expeditions into the interior, especially as it is claimed by Great Britain that Spain's explorations were very limited.

As early as 1502 Alonso de Ojeda, sailing from Cadiz, in command of an expedition, visited the Gulf of Paria, at the mouth of the Orinoco (Winsor. Narrative and Critical History, vol. ii, p 189).

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In 1530 Pedro de Acosta, with 300 men, settled "in Parema, southward of Oranoque." (B. C. I, p. 169). In 1531 Diego de Ordaz sailed from Spain with 400 men, cruised along the whole coast of Guiana from the Amazon to the Orinoco, proceeded up the Orinoco for a distance of 200 leagues (Herrera, General History; London edition of 1726, vol. 4, pp. 182–186). In 1541 Francisco de Orellana went down the Amazon, taking possession as he went, and passing out into the Atlantic sailed northward and westward along the entire seacoast of Guiana (Herrera, General History; translated by C. R. Markham for the Hakluyt Society, vol. 24, pp. 24, 26 *et passim*). In 1560 Pedro de Ursua started from Peru with an expedition in search of El Dorado. He started down one of the affluents of the Amazon. Lope de Aguirre, one of his officers, after Ursua's death, led the expedition down the Amazon to the Rio Negro, and thence reached the sea by way of the Orinoco, thus completing the circumnavigation of Guiana island, begun by Orellana above twenty years before. (Fray Pedro Simon, Noticias Historiales; 1627, translated by C. R. Markham for the Hakluyt Society, vol. ——, 1861). In 1568 a Spanish colony of 126 families settled at Cayenne (B. C., I, p. 169). Prior to 1581 Gonzalo Jimenez de Quesada had undertaken expeditions into Guiana, expending 50,000 pesos in connection therewith. Before his death Antonio de Berrio succeeded him, and in the course of ten years made three expeditions in search of El Dorado, expending 100,000 pesos, and settling Trinidad in 1591 "for depot and entrance to these provinces" (B. C., I, p. 8). In 1591 or 1592 he founded Santo Thome. In 1594 Berrio thus wrote to the King of Spain:

> "Last year I wrote to your Majesty how the Maestro de Campo, Domingo de Vera y Ybargoien, . . . had entered and seen the beginning of the magnificence of these provinces which it was impossible to do by force *according to the many people who have tried it*, with 500 men, etc."(*ib.*, p. 8).

On April 23, 1593, Maestro de Campo Domingo de Vera, on behalf of Antonio de Berrio, "Gouernour and Captaine generall

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for our Lorde the King, betwixt the riuers of . . . *Orenoque* and *Marannon*," took very formal possession. A copy of the document reciting this formal taking of possession is printed in the Case of Venezuela (pp. 38-41).

In 1598 Cabeliau, who reported on the first official Dutch voyage known to historical records, says:

"the Spaniards . . . have commenced to make a road through the rocks and hills of the mountains of Weyana, about six days' journey south of the River Worinoque, which road is about 1600 'stadien' long, and so broad that they can march five horses abreast through it, and they think by these means to conquer the country" (B. C, I, p. 20).

Major John Scott, writing in [? 1666], says:

"I shall now only mencion those brave Spaniards that from the first discoveries of the West Indies to the yeare 1617—some with great force, others with few followers—have attempted the discovery of the many provinces in the mayne of Guiana, as well up the Great River Amazones as from the Atlantique Ocean, and from the River Oranoque, most of which perished in their designes, and have left little behinde them saveing the remembrance of their brave undertakings.

1. Diego Deordas.
2. Juan Corteza.
3. Jasper d'Sylva.
4. Juan Gonsales.
5. Phillip Duverne.
6. Pedro d'Lympas.
7. Geronimo d'Ortel.
8. Ximenes.
9. Pedro d'Orsua.
10. Father Iala.
11. Fernandez Diserpa.
12. Diego d'Vorgas.
13. Cacerez.
14. Alonzo d'Herera.
15. Antonio Sedenno.
16. Augustine Delgado.
17. Diego d'Lozada.
18. Rineso.
19. Pedro d'Orsua, jun.
20. Montiseno.
21. Philip d'Fonta.
22. Juan d'Palma."

(B. C. I, p. 171.)

These are a few of the Spanish expeditions and settlements prior to the year 1600. After that time, and possibly before Essequibo itself was settled by Spaniards, and for many years prior to the first Dutch establishment in that river, the Spaniards were accustomed to traverse the coast region between the Orinoco and

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Essequibo, and to trade with the Indians in Barima, Pomeroon and Moruca.

It appears, then, conclusively, from the admissions of Great Britain and from historical records, that Spain discovered the Province of Guiana, a well defined territorial unit; circumnavigated the "island"; took a most formal and public ceremonial possession of it in 1593, accompanied by a public declaration of her purpose to appropriate the whole region from the Amazon to the Orinoco, and further accompanied by the submission of certain of the savage tribes within the region, and by the appointment of a governor; entered its principal rivers; sent her exploring expeditions into the interior; founded settlements, that were never abandoned, at Trinidad and Santo Thome, and another that was maintained for a time on the Essequibo; another at Parema "southward of Oranoque"; and yet another at Cayenne; that this was done at an enormous cost and with the publicly avowed intention of appropriating the Province of Guiana—and all this before any Dutch settlement, within the bounds of Guiana, was made or attempted.

It may be safely said that no title by discovery to any part of the *terra firma* of the New World was more distinctly and naturally defined as to its limits, or more safely rested upon a full exploration of all its boundaries and upon a public and persistently maintained assertion of a purpose to appropriate it.

It is not objected by Great Britain here, as it has been in other cases, that the discovery was only from the sea; or that it was casual; or that the land was not visited or explored; or that Guiana was too vast to be appropriated by one nation; or that the ceremonial occupation was not by the national authority, or, for any other reason, imperfect. The evidence presented by the British Case alone shows that all the necessary incidents of a good discovery of Guiana and of a good ceremonial occupation were complete.

But, if anything is lacking, the evidence presented by Venezuela, taken with the admissions of the British Case, we submit,

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establishes beyond debate that the Spanish discovery of Guiana was accompanied by every incident necessary to give to Spain whatever right and title a discoverer may have to a region, every boundary of which he was the first to traverse, and into the interior of which he has sent many official expeditions.

Let us now try to ascertain what place and what scope the writers upon international law and the usage of the great nations give to discovery as a source of title. We may confidently declare, at the outset, that every important commentator upon international law admits discovery to be a good source of title and that every one of the great nations has asserted and defended territorial rights based upon discovery. The writers are not at one, perhaps, as to all the necessary incidents of this title; but all agree that a good discovery gives a title to the thing discovered—a primary and exclusive right to appropriate it, and that the second comer enters rightfully only when there has been an abandonment, *de facto* or *de jure*, by the discoverer.

Before examining the authorities and the precedents it may be well to ascertain, if we can, just what is the position taken by Great Britain in the pending controversy upon this subject; and we have therefore assembled these extracts from the "Principles of Law" stated in the British Case:

"Discovery of new territory, apart from possession and effective occupation, does not establish an absolute and permanent right to dominion; it only gives to the discovering country a right (which, if the intention to exercise it is openly asserted, remains for a reasonable time the best right) to effectively occupy the newly-discovered territory" (B. C., p. 149).

Again:

"Newly-discovered territories, if not effectively occupied within a reasonable time by the discoverer, are open to the occupation of other Powers, and the first power effectively occupying such territory obtains an absolute right to the sovereignty of the territory occupied" (B. C., p. 149).

Again:

"In the passage cited above from Vattel, the true effect of discovery is for the first time pointed out, namely, that it gives to the discoverer an

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opportunity, by taking formal but notorious possession, to acquire an inchoate title, which he may perfect by actual occupation within a reasonable time. . . . However, all writers, both before and since Vattel, whether they do or do not expressly concede the discoverer an inchoate title, agree that mere discovery, apart from occupation, can of itself give no permanent dominion" (B. C., p. 151).

Again:

"The absolute right of the discoverer has never been asserted by Great Britain. It is true that in some early charters, such as that to the Hudson's Bay Company in 1670, it is recited that the territory to be occupied was a British discovery, but this, not being intended to justify the dispossession of any actual occupant, is not material" (B. C., p. 152).

Again:

"The right of the discoverer during the time which elapses before effective occupation being a merely inchoate right, it follows that there must come a time when it lapses *de jure*, whether the discoverer, in fact, acquiesces or not. Where this is the case the country may be occupied by others, whose title is in that case rightful from the beginning.

"Sir Travers Twiss says:

'Settlement when it has supervened on discovery constitutes a perfect title, but a title by settlement when not combined with a title by discovery is in itself imperfect, and its immediate validity will depend upon one or other condition that the right of discovery has been waived *de jure* by non-user, or that the right of occupancy has been renounced *de facto* by the abandonment of the territory.'

"No hard and fast rule can be laid down as to the period during which this right remains alive. Hall suggests 'such time as, allowing for accidental circumstances or moderate negligence, might elapse before a force or a colony were sent out to some part of the land intended to be occupied." The period may well vary with the circumstances of the territory and of the discoverer, and it would not be reasonable to allow as long for the completion of effective occupation at the present day as might have been allowable some centuries ago" (B. C., pp. 153–154).

And then we have:

"The inchoate right of the discoverer, as appears from the passage already cited from Vattel, and as is also made clear by Hall, is based theoretically on his formally taking possession. That the form should for the moment be accepted as equivalent to the fact is only reasonable in the application of the theory to the circumstances of a discoverer and the nature of the subject-matter. But formal acts of possession become unreal

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and unmeaning from the commencement when they have been left to stand alone for a longer period than the reasonable indulgence above mentioned requires" (B. C., p. 154).

We derive from these statements these distinct concessions:

FIRST.—That the discoverer acquires, by his discovery and public ceremonial occupation, the best—which we take to mean the exclusive—right to occupy the *territory discovered.*

SECOND.—That the ceremonial possession taken by the discoverer is for a time accepted as an actual possession of the territory discovered and retains that equivalency until a time when the form becomes "unreal and unmeaning," and that this point is reached if the ceremonial possession is "left to stand alone" for an unreasonable period.

THIRD.—That the reasonable period is not to be determined by any "hard and fast rule," but by all the circumstances surrounding the discoverer and the territory; that the rule of to-day is not the rule of the sixteenth century; but that within that reasonable period, when thus ascertained, the fact must supersede the form.

FOURTH.—That where a discovery has been made and the "inchoate right" has accrued to a nation, the second comer must found his right upon an abandonment by the discoverer of the territory, and this abandonment may be derived either from a presumption of law drawn from the attendant circumstances, or from a formal renunciation by the discoverer of his title.

FIFTH.—If the British Case may be taken to approve the extract from Hall—and it is apparently quoted with approbation—that the duty to be discharged by the discoverer within the reasonable time mentioned by the law writers is to send out "a force or colony" "to some part of the land" discovered.

But Great Britain does not seem to allow to Spain the use of Hall's rule, though quoting it with approval; and we therefore proceed to discuss the question: What must the discoverer do to prevent his ceremonial occupancy from becoming "unreal and unmeaning"? It is not claimed that the ceremonial occupation—

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the setting up of the flag or cross, and the accompanying proclamation—is effectual only as to the spot or locality where the ceremony takes place. The discovery and the proclamation furnish us with the limits of the ceremonial occupation, and the question that remains to be debated is: Does an actual occupation within the bounds of the ceremonial occupation, and made with reference to that ceremonial occupation, have the same limits, or is it narrowed to the region actually occupied? Must the ceremonial occupation be replaced throughout its whole extent by an actual, effective occupation, in order to save the title of the discoverer?

When the discoverer has made and maintains some settlement within the limits of his ceremonial occupation, and is publicly and continuously asserting sovereignty over the whole, an actual intent to abandon is excluded. If in such case abandonment is decreed, it must be because of a controlling legal presumption,—one that cannot be overcome by evidence. The British Case makes, so far as we can see, no question that Spain sent forces to and made permanent settlement in Guiana, within a reasonable period, and before any settlements were made or forces sent thither by any other nation. We think we are then justified in saying that the case has been brought to this: That Spain acquired a discoverer's title to the whole of Guiana; that this title gave her the exclusive right to occupy that whole territory within a reasonable time thereafter; and that, before this indeterminate period expired, and before any other nation, Spain sent her forces there and made actual settlements within the discovered territory.

Why, then, is not Spain's title that perfect title of which Sir Travers Twiss speaks? Settlement has "supervened on discovery," and that before any other nation had made any settlement within the bounds of Guiana. We are answered that Spain did not *effectively* occupy the whole of Guiana; that she perfected, by an actual occupation, her title to a part of it, but abandoned another part—not in fact, nor because she did not continue to

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proclaim an intent and make efforts to occupy all of it, but by a conclusive presumption of law, one that is not to be shaken by her vehement and persistent assertions of her rights, nor by the repeated expulsions by her armed forces of those who entered adversely. The intruders knew there had been no abandonment as a matter of fact by Spain; she had done everything else that was possible to maintain her title; and if she failed it was because she did not effectively occupy every part of Guiana before the Dutch came in.

We address ourselves therefore to the question: Did a conclusive legal presumption of an abandonment by Spain of her title, as a discoverer, to the disputed territory, arise from the fact that she had not "effectively occupied" every part of it before the Dutch came in?

Before proceeding to consider the legal rules applicable to this particular question, it may be well to look into the history of discovery as a source of title and to examine the general rules applicable to it, as given by the courts and by writers upon international law. We shall in the first place undertake to show that every nation that has ever claimed an original title to territory in North America has put forward discovery as a good source of title.

Chief Justice Marshall, in the opinion delivered by him in the case of Johnson *v.* McIntosh, decided by the Supreme Court of the United States in 1823, and reported in 8 Wheaton (p. 528), deals at length with this question, and the opinion has been cited with approval by writers on international law.

We quote from this distinguished jurist this clear and comprehensive discussion of the law of discovery and occupation, as applied by all the great powers of Europe in the settlement of America:

"On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition

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and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendancy. The potentates of the old world found no difficulty in convincing themselves that they made an ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence. But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle, which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession.

The exclusion of all other Europeans, necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.

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In the establishment of these relations, the rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it.

While the different nations of Europe respected the right of the natives, as occupants, they asserted the ultimate right to be in themselves; and claimed and exercised, as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been understood by all to convey a title to the grantees, subject only to the Indian right of occupancy.

The history of America, from its discovery to the present day, proves, we think, the universal recognition of these principles.

Spain did not rest her title solely on the grant of the Pope. Her discussions respecting boundary, with France, with Great Britain and with the

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United States, all show that she placed it on the rights given by discovery. Portugal sustained her claim to the Brazils by the same title.

France, also, founded her title to the vast territories she claimed in America on discovery. However conciliatory her conduct to the natives may have been, she still asserted her right of dominion over a great extent of country not actually settled by Frenchmen, and her exclusive right to acquire and dispose of the soil which remained in the occupation of Indians. Her monarch claimed all Canada and Acadie, as colonies of France, at a time when the French population was very inconsiderable, and the Indians occupied almost the whole country. He also claimed Louisiana, comprehending the immense territories watered by the Mississippi, and the rivers which empty into it, by the title of discovery. The letters patent granted to the Sieur Demonts, in 1603, constitute him lieutenant-general and the representative of the king in Acadie, which is described as stretching from the 40th to the 46th degree of north latitude; with authority to extend the power of the French over that country, and its inhabitants, to give laws to the people, to treat with the natives, and enforce the observance of treaties, and to parcel out, and give title to lands, according to his own judgment.

The States of Holland also made acquisitions in America, and sustained their right on the common principle adopted by all Europe. They allege, as we are told by Smith, in his History of New York, that Henry Hudson, who sailed, as they say, under the orders of their East India Company, discovered the country from the Delaware to the Hudson, up which he sailed, to the 43d degree of north latitude; and this country they claimed under the title acquired by this voyage. Their first object was commercial, as appears by a grant made to a company of merchants in 1614; but in 1621, the states-general made, as we are told by Mr. Smith, a grant of the country to the West India Company, by the name of New Netherlands.

The claim of the Dutch was always contested by the English; not because they questioned the title given by discovery, but because they insisted on being themselves the rightful claimants under that title. Their pretensions were finally decided by the sword.

No one of the powers of Europe gave its full assent to this principle more unequivocally than England. The documents upon this subject are ample and complete. So early as the year 1496, her monarch granted a commission to the Cabots to discover countries then unknown to Christian people, and to take possession of them in the name of the king of England. Two years afterwards, Cabot proceeded on his voyage, and discovered the continent of North America, along which he sailed as far south as Virginia. To this discovery the English trace their title.

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In this first effort made by the English government to acquire territory on this continent, we perceive a complete recognition of the principle which has been mentioned. The right of discovery given by this commission is confined to countries "then unknown to all Christian people"; and of those countries Cabot was empowered to take possession in the name of the king of England. Thus asserting a right to take possession notwithstanding the occupancy of the natives, who were heathens, and, at the same time, admitting the prior title of any Christian people who may have made a previous discovery.

The same principle continued to be recognised. The charter granted to sir Humphrey Gilbert, in 1578, authorizes him to discover and take possession of such remote, heathen, and barbarous lands as were not actually possessed by any Christian prince or people. This charter was afterwards renewed to Sir Walter Raleigh in nearly the same terms.

By the charter of 1606, under which the first permanent English settlement on this continent was made, James I. granted to Sir Thomas Gates and others, those territories in America lying on the seacoast, between the 34th and 45th degrees of north latitude, and which either belonged to that monarch, or were not then possessed by any other Christian prince or people. The grantees were divided into two companies at their own request. The first, or southern colony, was directed to settle between the 34th and 41st degrees of north latitude; and the second, or northern colony, between the 38th and 45th degrees.

In 1609, after some expensive and not very successful attempts at settlement had been made, a new and more enlarged charter was given by the crown to the first colony, in which the king granted to the "Treasurer and Company of Adventurers of the City of London for the first colony in Virginia," in absolute property, the lands extending along the seacoast four hundred miles, and into the land throughout from sea to sea. This charter, which is a part of the special verdict in this cause, was annulled, so far as respected the rights of the company, by the judgment of the court of king's bench on a writ of *quo warranto;* but the whole effect allowed to this judgment was, to revest in the crown the powers of government, and the title to the lands within its limits.

At the solicitation of those who held under the grant to the second or northern colony, a new and more enlarged charter, was granted to the Duke of Lenox and others, in 1620, who were denominated the Plymouth Company, conveying to them in absolute property all the lands between the 40th and 48th degrees of north latitude.

Under this patent, New England has been in a great measure settled.

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The company conveyed to Henry Rosewell and others, in 1627, that territory which is now Massachusetts; and in 1628, a charter of incorporation, comprehending the powers of government, was granted to the purchasers.

Great part of New England was granted by this company, which, at length, divided their remaining lands among themselves; and, in 1635, surrendered their charter to the crown. A patent was granted to Gorges for Maine, which was allotted to him in the division of property.

All the grants made by the Plymouth Company, so far as we can learn, have been respected. In pursuance of the same principle, the king, in 1664, granted to the Duke of York the country of New England as far south as the Delaware Bay. His royal highness transferred New Jersey to Lord Berkeley and Sir George Carteret.

In 1663, the crown granted to Lord Clarendon and others, the country lying between the thirty-sixth degree of north latitude and the river St. Mathes; and, in 1666, the proprietors obtained from the crown a new charter, granting to them that province in the king's dominions in North America which lies from thirty-six degrees thirty minutes north latitude to the twenty-ninth degree, and from the Atlantic ocean to the South sea.

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Further proofs of the extent to which this principle has been recognised will be found in the history of the wars, negotiations and treaties, which the different nations, claiming territory in America, have carried on, and held with each other.

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The treaty of Aix la Chapelle, which was made on the principle of the *status ante bellum*, did not remove this subject of controversy. Commissioners for its adjustment were appointed, whose very able and elaborate, though unsuccessful arguments, in favour of the title of their respective sovereigns, show how entirely each relied on the title given by discovery to lands remaining in the possession of the Indians.

After the termination of this fruitless discussion. the subject was transferred to Europe, and taken up by the cabinets of Versailles and London. This controversy embraced not only the boundaries of New England, Nova Scotia, and that part of Canada which adjoined those colonies, but embraced our whole western country also. France contended not only that the St. Lawrence was to be considered as the centre of Canada, but that the Ohio was within that colony. She founded this claim on discovery, and on having used that river for the transportation of troops, in a war with some southern Indians.

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This river was comprehended in the chartered limits of Virginia; but, though the right of England to a reasonable extent of country, in virtue of her discovery of the seacoast, and of the settlements she made on it, was not to be questioned; her claim of all the lands to the Pacific ocean, because she had discovered the country washed by the Atlantic, might, without derogating from the principle recognised by all, be deemed extravagant. It interfered, too, with the claims of France, founded on the same principle. She therefore sought to strengthen her original title to the lands in controversy, by insisting that it had been acknowledged by France in the fifteenth article of the treaty of Utrecht. The dispute respecting the construction of that article, has no tendency to impair the principle, that discovery gave a title to lands still remaining in the possession of the Indians. Whichever title prevailed, it was still a title to lands occupied by the Indians, whose right of occupancy neither controverted, and neither had then extinguished.

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Thus, all the nations of Europe, who have acquired territory on this continent, have asserted in themselves, and have recognised in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians.

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This opinion conforms precisely to the principle which has been supposed to be recognised by all European governments, from the first settlement of America. The absolute ultimate title has been considered as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring."

Hume (Hist. England, Chap. 48) gives this account of the view taken by the Protestant nations:

"The more scrupulous Protestants, who acknowledged not the authority of the Roman pontiff, established the first discovery as the foundation of their title."

Spite, then, of the declaration of the British Case that "there has never been any question among legal writers that the title of European nations to territory in new countries rests not upon discovery, but upon occupation," it is historically true that Great Britain based all of her original titles on the Atlantic coast of America upon discovery; that she in the most formal and serious state papers claimed title as the discoverer, granted that title to

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companies of her subjects while the lands were in whole or in great part not only unoccupied, but absolutely unexplored, and, by these grants became a warrantor of the title and made good that warranty by her arms.

The British Case disposes of these historical incidents in a way that is not British. It is true that in these charters the Nation, by its sovereign Head and under its Great Seal, recited that the lands granted were English lands by the right of discovery, "but all this," says the British Case (p. 152), "not being intended to justify the dispossession of any actual occupant, is not material." Is it meant that Great Britain was putting forward a title that she was ready to surrender to any contesting occupant—one that she would not support in behalf of her grantees; that, while asserting a title by discovery, she did not believe that any title could be rested on discovery? Is it meant that the lands granted to be settled were not British territory until made such by the effective occupation, by the grantees, of every part of the vast regions described? The only title Great Britain had to grant was the discoverer's title, for the lands covered vast tracts—in the watershed of the Mississippi and beyond the seacoast ranges—upon which no British foot had trod, and which no rule of constructive possession would have assigned to her as appurtenant to any actual occupation.

A map of the British possessions in North America in 1609, or in 1620, laid down on the principles she now seeks to apply to Venezuela, would be a most interesting exhibit.

But if these British Charters are to be construed as granting only the lands settled and those appurtenant to such settlements, we shall have occasion at a later stage of the argument to show what a tremendous scope Great Britain gave to a feeble coast settlement, and how little regard she then paid to natural boundaries and watersheds.

The statement that the claim to a title by discovery, put forward in these British charters, was not "intended to justify the

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dispossession of any actual occupant," is not true. The claim was put forward in the controversy with the Dutch over New Netherland, to dispossess the Dutch who were in actual occupation.

In 1632, England, by a paper sent to Holland, asserted a right

" for first discovery, occupation and the possession which they have taken thereof, and by the concession and Letters Patent they have had from our sovereigns " (Brodhead Papers, i, 55).

Later in the discussion (February 9, 1665) it was said on behalf of the Dutch Company, to the Dutch States-General, and through that body to the English Government:

" The right which the English found on the Letters Patent, wherein their king grants such vast extent to the limits of the English so as to include also all the possessions of this nation, is as ridiculous as if your High Mightinesses [the States-General] bethought yourselves of including all New England in the patent you would grant to the [Dutch] West India Company. Therefore, a continued possession for such a long series of years must confer on this nation a title which cannot be questioned with any appearance of reason." (Brodhead Papers, i, 325.)

In his reply (April 7, 1665) the British Ambassador said:

" The Deputies do not deny that this Land called New Netherland is within the patents granted by his Majesty to his subjects, and he, the said Envoy doth affirm that it is.

" And as to the point of Possession, there is nothing more clear and certain than that the English did take possession of and inhabited the Lands, within the Limits of the said patents, *long before any Dutch were there.* 'Tis not to say (nor is it requisite that it should be said) that they did inhabit every Individuall Spot, within the limits of them. It is enough that their patent is the first, and that in pursuance thereof, they had taken possession, and did inhabit and dwell within the same, and made considerable Towns, Forts and Plantations therein before the Dutch came to dwell there. Is it to be imagined that the Dutch East-Indie Company have fully peopled and cultivated the Island of Ceylon, and other of their great Colonies in the East-Indie, and yet if the English should, upon such pretence, endeavor to settle there without their consent, Would they approve thereof, or suffer the same or accomp their title there to be good, or other than Precarious?" (Brodhead Papers, i, 332.)

The Dutch set up a double title by discovery to the New Netherlands (New York); a discovery, by Spain, of the New World, to

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which they had succeeded, as to the New Netherlands, by the Treaty of Munster; and a discovery of this particular region by their own navigators. In the charter granted to the West India Company in 1664, a title by discovery is also set up. We quote:

"Now, therefore, we, being hereby desirous of assuring all and sundry whom it may in any way concern, of our intention in the aforewritten Charter, do declare our meaning to have been expressly, and still to be, that the aforementioned Company, in conformity with the aforewritten Charter, was empowered, and still is empowered, to establish colonies and settlements of people on lands which are not occupied by others, to extend themselves so far as the limits hereinbefore related, and especially since the same is necessary for preservation of the right which is due to them, by virtue of the aforewritten Charter, *by discovery and occupation on the fresh river, and other places situated more easterly in* New Netherland, up to Cape Cod, and from Cape Hinloopen, and 15 miles southerly, both along the coast, provisionally, and pending further agreement, respecting the limits to be made between the King of Great Britain and ourselves." (B. C., I, p. 151.)

Russia, too, has brought forward a title by discovery as applicable to her former American possessions. Sir Travers Twiss says (Oregon Case, p. 162) that as to Alaska, Russia claimed "the title of first discoverer; the title of first occupation; and in the last place that which results from a peaceable and uncontested possession of more than half a century."

As we have already seen, France "founded her title to the vast territories she claimed in America on discovery."

That Spain and Portugal asserted the right of the discoverer, from the earliest times, cannot be denied.

The statements we have quoted from Chief Justice Marshall, and the following from Wheaton's International Law (Sec. 166) are historically indisputable:

"Independent of this papal grant, the right of prior discovery was the foundation upon which the different European nations, by whom conquests and settlements were successively made on the American continent, rested their respective claims to appropriate its territory to the exclusive use of each nation. Even Spain did not found her pretensions solely on the papal grant."

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The United States presented a claim to Oregon based on discovery. And Cobbett (Int. Law Cases, 2d Ed., p. 857) says:

"In support of the British claim stress was laid on the discovery of Meares and Vancouver and other Englishmen who had made explorations inland."

It appears then that England, Holland, Spain, Portugal, France, Russia and the United States—the only nations that have claimed original titles to American territory—have all rested their rights to such territory upon discovery, and have, as we shall see, treated this title as perfected, by feeble settlements, to vast regions not only not "effectively occupied" but largely unexplored.

Let us now see, somewhat in detail, what the writers upon international law say as to the two forms of title by appropriation — that of the discoverer, and that of the second comer—and particularly the rules they give us for determining whether there has been such an abandonment by the discoverer as to give another the right to enter and appropriate.

It is clear that a right to appropriate property can only exist, *first*, when the property has never had an owner, and, *second*, when, having had an owner, it has been abandoned. The first is the discoverer's appropriation, and is a perfect title from the beginning. The appropriation of the second comer gives an imperfect title, especially if the abandonment upon which it rests for its validity is a mere implication.

The British Case, in the extract already given (p. 153), quotes Sir Travers Twiss as saying:

"Settlement, when it has supervened on discovery, constitutes a perfect title, but a title by settlement when not combined with a title by discovery is in itself imperfect, and its immediate validity will depend upon one or other condition that the right of discovery has been waived *de jure* by non-user, or that the right of occupancy has been renounced *de facto* by the abandonment of the territory" (Twiss, Law of Nations, 2d ed., p. 210).

The proposition of law propounded by Great Britain as applicable here, is that in order to perfect his title the discoverer must,

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"within a reasonable time," "effectively occupy" all of the territory discovered; and that if he does not do so the "first power effectively occupying such territory obtains an absolute right to the sovereignty of the territory occupied" (B. C., p. 149).

The effective occupation which it is claimed the discoverer must accomplish within a reasonable time after discovery is thus defined in the British Case:

> "Effective occupation means the use and employment of the resources of the country and the general control of its inhabitants under the protection and by the authority of a government claiming and exercising jurisdiction in that behalf" (B. C., p. 149).

This is to say that the discoverer's title is not perfected until he has brought into use the resources of the whole territory discovered, and has subjected its savage inhabitants to his control.

Upon this, we remark, in passing, *first*, that it is not a correct statement of the law; *second*, that if it were it would involve a very great extension of "the reasonable period"; and, *third*, that it will hardly be claimed that a less strict rule must be applied to the second comer.

This last difficulty Great Britain has not failed to observe. If the rule were to be applied to the Dutch in all its strictness, it was obvious to the compilers of the British Case that the Dutch possessions in Guiana would be very limited; and so we find some labored attempts to introduce ameliorations of its strictness, adapted to British needs. Thus it is said (p. 155), that while settlement and cultivation are always present in effective occupation, "of course the area occupied will not be confined to the actual sites appropriated for residence or cultivation"; and a quotation from Field, used approvingly, allows that an "effective control" of a region raises a legal presumption of occupation—effective occupation, of course—and this with or without the use of its resources. Again, it is said that the assertion and maintenance of an exclusive

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right to trade "*in any specific area*, surrounding its settlements," is "effective control."

And if the right to trade is used (we suppose a use is implied), though it be the merest and most primitive barter of beads for skins, in a land capable of producing enormous crops of the best cereals to feed a hungry world, or of producing the precious metals, that is a sufficient use of the "resources of the country" to complete effective control. In other words, if the discoverer, or the second comer, claims and enforces a right to dispose of the trade with the savages within "any specific area (he may fix his own limits) surrounding his settlements," that is the control of the inhabitants—one element of "effective occupation"; and, if he uses this primitive trade in any degree, he has perfected his title, by an effective occupation, to the "specific area," however vast.

In another statement upon this subject (B. C., p. 156) an "effective occupation" is allowed without the use of either of the elements of the formal definition we have been discussing. We quote:

"Again, when the Government of a settlement acquires the exclusive ascendancy over, and alliance with, surrounding tribes, and by that means excludes foreign influence from the territory which they inhabit, that territory is effectively occupied as against the colonizing enterprise of any other country."

Here no control of the inhabitants is required, for the "ascendancy" goes with an "alliance;" no use of the resources of the country, but only the exclusion of "foreign influence," and that effected by alliances with the savage tribes. If by the gift of three pints of glass beads a native chief can be made to keep out "foreign influence," an "effective occupation" has been perfected. In other words, a commercial treaty with a savage chief, by which an exclusive right to the foreign trade of a region is secured, may constitute "effective occupation," without a post or a settlement,

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or indeed without any right to establish one; for the acceptance of a treaty grant to exclusive trade rights from a native chief is an acknowledgment of his sovereignty.

It seems to have been overlooked that Rule (*a*) of our Arbitration Treaty contains an implied admission that even an "exclusive political control," which is much larger than a trade alliance, is not, by the rules of international law, an "effective occupation," else it would not have been left in the Tribunal's discretion whether it should be taken as such.

But, without further comment upon these impossible and irreconcilable definitions, let us see what a discoverer is required to do, after his ceremonial occupation, to save his title. It should be first stated—a proposition that we think will not be controverted—that a good ceremonial possession extends to the entire region discovered. There was no rule of international law when the New World was discovered and was being occupied, by which the regions appropriated by discovery could be limited. The mere sighting of a continent from the sea, or a single landing upon its shores, might not support a title by discovery to the entire continent. But, if not, it was because there had not been a good discovery of the continent. We do not need here to discuss that point, however, for the region in question is only the "province of Guiana," and the discovery was accompanied by many landings and very extensive explorations, including every part of all its boundaries.

The claim of Spain, by her ceremonial possession, included the province of Guiana, and her title, as the discoverer covered the whole of it. No other nation could thereafter found any right to any part of the province upon discovery; for Spain had left no part undiscovered.

Twiss says:

"There can be no second discovery of a country. In this respect title by discovery differs from title by settlement" (Oregon Case, p. 166).

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International law offers only three titles to a second comer: A title by conquest, a title by treaty, a title by prescription—the last including the title based upon the discoverer's abandonment.

It seems to be the contention of the British Case that if the discoverer fails to accomplish an "effective occupation," according to one of the various definitions of those terms given, within a reasonable time, his title absolutely fails, and that whether any other nation has entered or not. This we deny, and assert the rule and the reason to be that no matter what time has elapsed after discovery, if the discoverer makes an actual occupation before any other nation his "title by settlement is superadded to title by discovery."

And, first, as to the reason of the rule requiring occupation. It is that the vacant lands of the world may not indefinitely be kept out of use; that, failing such a use by the discoverer, a presumption of abandonment arises, and any other nation may take and use them. The reason only requires that the title of the discoverer be subordinate to a possible public need of the lands. But, if their non-occupation refutes this presumption, and the discoverer, after any time, becomes the first settler, why should any forfeiture be enforced against him. Indeed how can a forfeiture be enforced against him in his own behalf. Can he prescribe against himself in his own behalf?

Vattel (pp. 99-100) has this to say of the title by discovery:

"All mankind have an equal right to things that have not yet fallen into the possession of any one; and those things belong to the person who first takes possession of them. When therefore a nation finds a country uninhabited and without an owner, it may lawfully take possession of it: and after it has sufficiently made known its will in this respect it cannot be deprived of it by another nation. Thus navigators going on voyages of discovery, furnished with a commission from their sovereign, and meeting with islands or other lands in a desert state, have taken possession of them in the name of their nation: and this title has been usually respected, provided it was soon after followed by a *real possession*. But it is questioned whether a nation can, by the bare act of taking possession, appropriate to

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itself countries which it does not really occupy and thus engross a much greater extent of territory than it is able to people or cultivate. It is not difficult to determine that such a pretension would be an absolute infringement of the natural rights of men, and repugnant to the views of nature, which, having destined the whole earth to supply the wants of mankind in general, gives no nation a right to appropriate to itself a country, except for the purpose of making use of it, and not of hindering others from deriving advantage from it. The law of nations will, therefore, not acknowledge the property and sovereignty of a nation over any uninhabited countries, except those of which it has really taken actual possession, *in which* it has formed settlements, or *of which* it makes actual use."

In view of this quotation (partially given in the British Case, p. 150), we cannot understand how Great Britain can justify the assertion that "Vattel never even notices the claim of a discoverer as such; nor does he appear to regard newly discovered territory as subject to any other rule as regards their appropriation than other vacant lands." For, to the most casual reader, it must be plain that this author speaks first of a ceremonial possession by the discoverer, the nation thus making known its purpose to appropriate the region, and declares that the title, acquired by these acts, which is that of a discoverer, has been usually respected, "provided it was *soon after* followed by a real possession." If this is not to affirm that, pending the "soon after," the discoverer has a title, what is it? And if for "soon after" we read "within a reasonable time," do we not have the rule as to title by discovery stated much as other writers state it? No one has claimed that a ceremonial possession gives to the discoverer an indefeasible title. We should notice, also, that the reason given by Vattel for this rule is precisely what we stated it to be, namely, that for one nation indefinitely to exclude others from territory that it does not attempt to occupy is repugnant to the law of nature, which destined the earth to supply the wants of mankind. A title defeasible by the effective appropriation of another nation fully responds to this law of nature. It is the hindering of others from using what you do not yourself use that is not allowable; and a defeasi-

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ble title removes the hindrance. It is not, however, a question of the fullest or the best use of the territory. That would be a perilous test of dominion. Great Britain has much territory that is not settled.

We thus find that Vattel, who is supposed by our opponents to be less favorable than other writers to title by discovery, only requires that the ceremonial possession shall "soon after" be followed by an actual posssession. Some settlement, or some actual use makes the title good, that is, perfects it. He does not at all support the doctrine that every part of the territory must be "effectively occupied," its resources appropriated and its inhabitants brought under control before the discoverer's title is perfected. On the contrary, he allows title to *the territory* "*in which*" settlements have been made. We shall find upon a fuller examination, we think, that the requirement is that, within a reasonable time, such acts shall be done as give evidence of an intention in good faith to carry out the implication of the ceremonial possession; that is, to appropriate the region to actual uses. This does not require the occupation of every part—at once or at any time

The quotations from Martens and Kluber, given in the British Case (p. 151) not only do not support the theory that the discoverer's title can only be perfected by an effective occupation of the whole territory, but are to the contrary. Martens speaks of the case where the discoverer of an island, &c., immediately abandons it, leaving no "permanent traces of possession and of his *intent*." What is demanded here is evidence, in the territory, of an intent—enough to be notice that there is a *bona fide* purpose to occupy.

So Kluber only disallows intention as a mere mental process, and requires that it shall have a tangible expression. This we allow, but insist that Trinidad, Santo Thome and Essequibo, and the armed expeditions of Spain, the expulsion of the Dutch, etc.,

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furnish the required indicia of possession and of intent—the tangible expressions that these distinguished writers insist upon.

The British Case (p. 153) quotes, as we have seen, with apparent approval, from Hall, this definition of the time limit, and of the occupancy to be accomplished within it:

"Such time as, allowing for accidental circumstances or moderate negligence, might elapse before a force or a colony were sent out to *some part* of the land intended to be occupied" (Hall, Int. Law, 4th Ed., p. 108).

As is well said by Hall (*Id.*, p. 118):

"When voyages of discovery extended over years, when the coasts and archipelagos lying open to occupation seemed inexhaustible in their vastness, when states knew little of what their agents or the agents of other countries might be doing, and when communication with established posts was rare and slow, isolated and imperfect acts were properly held to have meaning and value. When therefore it first became worth while to question rights to a given area, or to dispute over its boundaries, the tests of effective occupation were necessarily lax."

There is no period to which these words can apply so forcibly as during the century and a half immediately following the discovery of America by Columbus; and we believe it to be true that in no case has the title to extensive regions on the Continent of America been established and perfected by a more complete series of acts of occupation than those of the Spanish in Guiana during the first century and a half.

That the views of this writer may be better understood, we quote from him more at length. He says (*ib.*, pp. 106–109):

"§ 32. When a state does some act with reference to territory unappropriated by a civilised or semi-civilised state, which amounts to an actual taking of possession, and at the same time indicates an intention to keep the territory seized, it is held that a right is gained as against other states, which are bound to recognise the intention to acquire property, accompanied by the fact of possession, as a sufficient ground of proprietary right. The title which is thus obtained, and which is called title by occupation, being based solely upon the fact of appropriation, would in strictness come into existence with the commencement of effective control, and would last only while it continued, unless the territory occupied had been so long held

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that title by occupation had become merged in title by prescription. Hence occupation in its perfect form would suppose an act equivalent to a declaration that a particular territory had been seized as property, and a subsequent continuous use of it either by residence or by taking from it its natural products.

States have not however been content to assert a right of property over territory actually occupied at a given moment, and consequently to extend their dominion *pari passu* with the settlement of unappropriated lands. The earth-hunger of colonising nations has not been so readily satisfied; and it would besides be often inconvenient and sometimes fatal to the growth or perilous to the safety of a colony to confine the property of an occupying state within these narrow limits. Hence it has been common, with a view to future effective appropriation, to endeavour to obtain an exclusive right to territory by acts which indicate intention and show momentary possession, but which do not amount to continued enjoyment or control; and it has become the practice in making settlements upon continents or large islands to regard vast tracts of country in which no act of ownership has been done as attendant upon the appropriated land.*

In the early days of European exploration it was held, or at least every state maintained with respect to territories discovered by itself, that the discovery of previously unknown land conferred an absolute title to it upon the state by whose agents the discovery was made. But it has now been long settled that the bare fact of discovery is an insufficient ground of proprietary right. It is only so far useful that it gives additional value to acts in themselves doubtful or inadequate. Thus when an unoccupied country is formally annexed an inchoate title is acquired, whether it has or has not been discovered by the state annexing it; but when the formal act of taking possession is not shortly succeeded by further acts of ownership, *the claim of a discoverer to exclude other states is looked upon with more respect than that of a mere appropriator, and when discovery has been made by persons competent to act as agents of a state for the purpose of annexation, it will be presumed that they have used their powers, so that in an indirect manner discovery may be alone enough to set up an inchoate title.*

An inchoate title acts as a temporary bar to occupation by another state, but it must either be converted into a definitive title within reasonable time by *planting settlements or military posts, or it must at least be kept alive by repeated local acts, showing an intention of continual claim.* What acts

*Some writers (*e. g.*, Klüber, § 126; Ortolan, Domaine International, 45–47; Bluntschli, §§ 278, 281) refuse to acknowledge that title can be acquired without continuous occupation, but their doctrine is independent of the facts of universal practice.

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are sufficient for the latter purpose, and what constitutes a reasonable time, it would be idle to attempt to determine. The effect of acts and of the lapse of time must be judged by the light of the circumstances of each case as a whole. It can only be said, in a broad way, that when territory has been duly annexed, and the fact has either been published or has been recorded by monuments or inscriptions on the spot, a good title has always been held to have been acquired as against a state making settlements within such time as, allowing for accidental circumstances or moderate negligence, might elapse before a force or a colony were sent out to some part of the land intended to be occupied; but that in the course of a few years the presumption of permanent intention afforded by such acts has died away, if they stood alone, and that more continuous acts or actual settlement by another power became a stronger root of title. On the other hand, when discovery, coupled with the public assertion of ownership, has been followed up from time to time by further exploration or by temporary lodgments in the country, the existence of a continued interest in it is evident, and the extinction of a proprietary claim may be prevented over a long space of time, unless more definite acts of appropriation by another state are effected without protest or opposition."

It will be seen that Hall strongly supports the contention of Venezuela. He holds that the inchoate title of the discoverer may be converted into a definitive title by planting settlements or military posts, and may even be kept alive by repeated local acts of less moment, but showing "an intention of continual claim"; and that vast tracts of country, in which no act of ownership has been done, may be effectively appropriated by very limited settlements. It is only where the ceremonial occupancy has "stood alone"—has not been followed by expeditions, explorations, settlements or other like acts—that it becomes unmeaning.

Discussing the inchoate title by discovery or occupation, Westlake says (Int. Law, pp. 160–161):

"The first of the questions of detail which have been alluded to is *under what conditions did discovery formerly, or does a commencement of occupation now, confer an inchoate title to territorial sovereignty—that is, the right of occupying or completing the occupation within a reasonable time, and of subjecting or expelling the settlements which other civilized powers or their subjects may have made in the interval?* The most important con-

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dition is that the state claiming an inchoate title shall make known its intention of deriving the full benefit from the discovery made or occupation commenced by itself or its subjects, or at least that there shall be no reasonable doubt about the intention in the circumstances. Were this not the case, another state or its subjects might enter the country under a reasonable belief that it had not been appropriated by a foreign power, and might justifiably complain if an inchoate title claiming precedence over theirs was afterwards sprung on them. Accordingly it has always been usual for the state which intends to claim an inchoate title to make its intention known from the beginning. 'In newly discovered countries,' Lord Stowell said, 'where a title is meant to be established for the first time, some act of possession is usually done and proclaimed as a notification of the fact.' (In the Fama, 5 C. Robinson 115.) Here notification is to be understood in the general sense of making known, and not in the special sense of an express communication to other powers, in which it is used in Art. 34 of the general act of the Conference of Berlin.

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What has been deemed sufficient to make known the intention of appropriating the sovereignty has naturally varied with the circumstances of different times. It never was thought that a discovery might be kept secret and the benefit of it retained."

This writer does not attempt here to specify the particular things that a discoverer must do, for there is no fixed schedule. He must do such things as will make known his intention "of deriving the full benefit from the discovery;" such things as will be reasonable notice to other States, so that they may not enter in the reasonable belief that the lands are unappropriated. In the case in hearing no inchoate title was "sprung" upon the Dutch. They entered in disregard of Spain's well known intention to claim the full benefit of her discovery.

Surely it cannot be contended that a post or colony, established by a discoverer within a reasonable time, can have no reference to the extent of his discovery and of his ceremonial occupation; that the discoverer gets no more by his settlement than a second comer would get—only so much as he actually occupies—or as is appurtenant to it by the ordinary rules of law; that to this extent only the inchoate title is perfected,

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and, as to all else, lost to any comer; that the discoverer's first actual settlement is not to be accepted as a beginning only, but a beginning and an end. Hall says: "The claim of a discoverer to exclude other States is looked upon with more respect than that of a *mere appropriator*." Or does Great Britain mean that the discoverer has a reasonable time to make a first, a second and a third settlement, and so on until he has "effectively occupied" his whole discovery?

Do the nations stand by, hour glasses in hand, timing these intervals, and ready to intervene and seize when the interval between settlements is fancied to be unreasonable? Not so. If the discovery of Guiana by the Spaniards was a good discovery—and it is not challenged—the inchoate title derived therefrom was to Guiana; and a firm settlement within that region, and within a reasonable time, or before any other nation had entered, perfected that title—not in part, but in its entirety. Spanish Santo Thome is not to be limited by the rules that apply to Dutch Essequibo. Spain was the discoverer; the Dutch "mere appropriators." What else can Hall mean when he speaks of sending a force or a colony "to some part of the land intended to be occupied"? Such an act is completely expressive of the discoverer's "intention," as Westlake says, "of deriving the full benefit from the discovery made."

Legal possession, which may form the basis of a title, may exceed the limits of actual physical occupation. The mere *act*, considered by itself, is possession only of the land physically occupied. But the occupation of part of a tract, *in the name of the whole*, constitutes an entry into and possession of the whole. The contemporaneous manifestation of intent will define the legal effect of the act.

In private law an entry, under a deed describing certain metes and bounds, upon any part of the land, is a possession of the whole, if there is then no adverse possession.

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In Ellicott *v.* Pearl (10 Peters, 441-2), the Supreme Court of the United States says:

"An entry into possession of a tract of land, under a deed containing specific metes and bounds, gives a constructive possession of the whole tract, if not in any adverse possession, although there may be no fence or enclosure around the ambit of the tract, and an actual residence only on a part of it."

And again in Hunnicutt *v.* Peyton (102 U. S. Sup. Crt., 333, 368), that Court says:

"When the owner of the Basquez title entered upon the tract, took actual possession of a part by his tenant, and retained it, claiming the whole, the law gave to that owner the constructive possession of all that was not in the actual adverse possession or occupancy of another."

The entry of the discoverer upon a part, under a claim to the whole, is, upon the same principle, an occupation of the whole. His claim is to the territory discovered; and, when that territory as here has well-defined bounds, his entry is to be referred to that claim, precisely as if he had entered under a deed or patent.

That an entry upon a part for the whole is good, Great Britain asserted distinctly, as we have seen, in her controversy with the Dutch over New Netherland. The British colonies were settled under patents from the King defining vast territorial limits and Great Britain claimed that a few settlements within those limits effected a good possession of the whole.

We quote again the words of the British Ambassador:

"And as to the point of Possession, there is nothing more clear and certain than that the English did take possession of and inhabit the Lands, within the Limits of the said patents, *long before any Dutch were there.* 'Tis not to say (nor is it requisite that it should be said) that they did inhabit every Individuall Spot within the limits of them. *It is enough that their patent is the first, and that in pursuance thereof, they had taken possession, and did inhabit and dwell within the same,* and made considerable Towns, Forts and Plantations therein before the Dutch came to dwell there." (Brodhead Papers, i, 332.)

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If the principle thus invoked by Great Britain be applied to the case at bar, it is difficult to see how, in view of the Spanish grant to Berrio, Great Britain can avoid admitting that Guiana was *possessed* by Spain. The evidence regarding this grant is as follows:

"The Audiencia of the new kingdom of Granada made a contract . . . with Captain Antonio de Berrio respecting the exploration and settlement of *El Dorado* . . . They gave him the government of THOSE PROVINCES for two lives . . . His Majesty was pleased to approve, and ordered arrangement to be sanctioned in 1586; thereupon the said Berrio entered on the work and founded in . . . Trinidad the town of San Joseph de Aruna and inland that of Santo Thome. He died in 1597, and was succeeded by his son Fernando de Berrio." (V. C.-C., vol, iii, p. 5.)

This Berrio grant was prior to any Dutch grant; it was, therefore, so far as the Dutch were concerned, a "*first patent*"; it was "*in pursuance thereof*" that Berrio took "*possession and did inhabit and dwell within the same*," making "*considerable towns, forts and plantations therein before the Dutch came to dwell there.*" Does not such a grant, and do not such acts, meet the requirements of the law as stated by the British Ambassador?

It is well shown, as matter of fact, that the settlements at Trinidad and at Santo Thome had a direct reference to the occupation of the Province of Guiana. The letter of Berrio to the King of Spain, written in January, 1593 (B. C., I., p. 1), shows that the occupation of Guiana was the great object for the attainment of which he endured so many perils, privations and losses. Speaking of Trinidad, he says:

"I saw clearly that if that island were not settled it would be impossible to settle Guayana" (*Id.*, p. 3).

And, in December, 1594, he wrote:

"And this Island of Trinidad, which I settled three years ago for depôt and entrance to these great provinces" (*Id.*, p. 8).

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In these letters we have such further expressions of his purpose as these:

"I shall attempt to penetrate into the interior of Guayana."

"I will enter immediately into Guayana; and if it is one-twentieth of what is supposed, it will be richer than Peru."

The account given by de Vera of the possession taken in April, 1593 (V. C., vol. i., p. 381), refers to Berrio as Governor and Captain-General for the King between the Amazon and the Orinoco, and of Trinidad; recites that Berrio had discovered "the noble provinces of Guiana and Dorado," and had taken "possession to govern the same;" that he (de Vera) had been sent to find out and discover the way "to enter and to people the said provinces," etc. The publicity which these proceedings were intended to have was promoted by the fact that the letter of de Vera fell into the hands of the British by capture at sea. So that Great Britain had, in 1593, the most formal and effective notice of Spain's purpose to occupy the whole of Guiana; that her entry on the Orinoco was to be referred to that intent, and that Guiana had been constituted a Spanish Province, and a Governor appointed over it.

In furtherance of this purpose to occupy Guiana, which did not originate with Berrio, Trinidad and Santo Thome were settled and fortified, and for a time a settlement was maintained at Essequibo.

Access to the interior—the Caroni and Cuyuni basins—was then believed to be only by the Orinoco, from its south bank, at some point below and near to the mouth of the Caroni.

If, then, settlements made by the discoverer of a defined territory within that territory, and having for their expressed purpose the appropriation of that territory, can in any case have that effect, we have that case here.

Our adversaries are driven to maintain the proposition that the discoverer must, within the reasonable time given for the substitution of an actual for a ceremonial possession, accomplish the

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"effective occupation" of the whole region; that the settlements of the discoverer can have no larger constructive extent or effect, than those of a nation coming afterwards into the territory. Which is to say that the possession of one entering under a deed cannot be larger than that of a squatter. These propositions, we believe, have never been put forward before, and they are on their face untenable and unreasonable. It is certain that they do not square with the former practice and diplomatic pretensions of Great Britain.

Twiss (Oregon Case, pp. 164-5), quotes from a note of Messrs. Huskisson and Addington, the British Commissioners in the Oregon dispute, under date of December, 1826;

"Upon the question how far prior discovery constitutes a legal claim to sovereignty, the law of nations is somewhat vague and undefined. It is, however, admitted by the most approved writers, that mere accidental discovery, unattended by exploration—by formally taking possession in the name of the discoverer's sovereign—by occupation and settlement more or less permanent—by purchase of the territory, or receiving the sovereignty from the natives—constitutes the lowest degree of title; and that it is only in proportion as first discovery is followed by any or all of these that such title is strengthened and confirmed."

Here the Spanish discovery of Guiana was not accidental; it was attended by extended and costly explorations, by the formal taking of possession, in the name of the discoverer's sovereign, by the formal submission of certain tribes on the Orinoco and in the interior, and by permanent occupation and settlement. These British Commissioners did not venture to suggest that the actual occupation must cover the whole region; indeed, what they say is quite to the contrary. If they had advanced such a contention to defeat the claim of the United States, they would have left no ground for the British claim to rest upon.

And Twiss himself says (Oregon Case, p. 165):

"It thus seems to be universally acknowledged that discovery, though it gives a right of occupancy, does not found the same perfect and exclusive title which grows out of occupation, and that unless discovery be followed

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within a reasonable time *by some sort of settlement*, it will be presumed either to have been originally inoperative, or to have been subsequently abandoned."

If followed by "some sort of settlement," there is no inference of abandonment. Now, much as Great Britain minimizes the Spanish settlements, she will hardly contend that they did not meet this description.

In his Law of Nations (Sec. 128), Twiss distinctly rests the title of the second comer, upon an abandonment by the discoverer, upon his implied acquiescence. He also quotes Wheaton to the same effect. He says:

"Settlement when it has supervened on discovery constitutes a perfect title, but a title by settlement, when not combined with a title by discovery, is in itself imperfect, and its immediate validity will depend on one or other condition; that the right of discovery has been waived *de jure* by non-user, or that the right of occupancy has been renounced *de facto* by the abandonment of the territory. When title by settlement is superadded to title by discovery the law of nations will acknowledge the settlers to have a perfect title, but when title by settlement is opposed to title by discovery, although no convention can be appealed to in proof of the discovery having been waived, still a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar its claim to disturb the settlement."

Again he says (Sec. 129):

"Title by settlement, then, as distinguished from title by discovery, when set up as a perfect title, resolves itself into title by usucaption or prescription."

This shows that any settlement by the discoverer has this special effect and significance: it refutes the implication of an intent to abandon his discovery. It does more--it is the affirmative expression of his purpose to make good his title, not to a part, but to the whole. No other can enter until the discoverer has in fact or by implication abandoned his right, and no such implication can arise after he has taken an actual possession of a part for the whole. It is most important also to notice that in the

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opinion of this author the Dutch title here must be rested on prescription.

The following from a dispatch by Lord Salisbury, December 26, 1889, to the Portuguese Government (Blue Book, Africa, No. 2, 1890), recognizes the difference between a paper occupancy and one where there are acts that express the intention:

"It is not, indeed, required by international law that the whole extent of a country occupied by a civilized power should be reclaimed from barbarism at once; time is necessary for the full completion of a process which depends upon the gradual increase of wealth and population; but, on the other hand, no paper annexation of territory can pretend to any validity as a bar to the enterprise of other nations, if it has never, through vast periods of time, *been accompanied by any indication of an intention to make the occupation a reality, and has been suffered to be ineffective and unused for centuries.*"

This is to say that if Spain, by actual settlement within Guiana, made her occupation "a reality," and, by her expeditions into the country and the expulsion of others, continued to assert her purpose, her appropriation of Guiana was good. She did not loose to any comer the regions which she had not reclaimed from barbarism.

Field, in his National Code (p. 29), proposes that the right of the discoverer shall be decreed to be abandoned "if the *intent to exercise it* is not manifested within twenty-five years after discovery."

This recognizes the principle that before a second comer can have a perfect title, the right of the discoverer must be gotten out of the way, and the further principle that an abandonment cannot be inferred while he continues to manifest, by suitable acts there, the intent to appropriate the territory. A settlement or a post in any part of the land – especially when it has, or is given, a definite relation to a specific discovery—is an efficient and open manifestation of that intent.

If Great Britain might completely withdraw from the Falkland Islands, leaving them without any semblance of occupation

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for over fifty years, and still maintain that she had not abandoned them, with what show of reason can she claim an abandonment of any part of Guiana, as against Spain, in the face of her actual and maintained settlements, of her constant and public assertion of her rights, of the frequent marches of her armed forces through the interior, and of the expulsion by her of intruders from time to time? No; unless it results from some inexorable rule of law, that will not take any account of these things; that will accept nothing less than the effective occupation of every part, no title can be maintained against Spain to any part of Guiana upon the theory of an abandonment.

So Grotius (War and Peace, Book 2, Ch. 4, p. 86) allows that the *intention* of the rightful owner may be manifested by "some external sign." It is the intent to abandon upon which the right of the other rests, and this is rebutted by express and visible acts showing an intent to keep. A settlement in any part of the country may be that.

That an "effective occupation" of the whole territory is not necessary to perfect the title of a discoverer (for surely the rule is not less liberal in his case) seems to be admitted by Lord Salisbury in his despatch to Sir Julian Pauncefote, of May 18, 1896. He said:

"All the great nations in both hemispheres claim and are prepared to defend their right to vast tracts of territory which they have in no sense occupied and often have not fully explored."

There may be, in some cases, a question as to the extent of the discovery; for the discovery of a locality is not necessarily a discovery of all the contiguous lands without regard to their extent; but there can be no such question here. Guiana was a unit, and the discovery included all of its boundaries.

This question is discussed by Twiss (Law of Nations, Sec. 122–3). He says:

"Prior discovery gave a right to occupy, provided that occupancy took place within a reasonable time, and was ultimately followed by permanent settlement and by cultivation of the soil."

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"The question as to the extent of territory over which the discovery of a part gives rise to the right of occupancy, may receive a solution by reference to the principles of law, which decide to what extent natural possession must go in order to give a title to more than is actually inhabited. It is not necessary, in order to constitute the occupant of a thing the legal proprietor of it, that he should have natural possession of the whole of it; if he has possession of a part, which cannot be separated from the whole, he is in possession of the whole."

He next quotes from Vattel (Sec. 124):

"It may happen that a nation is contented with possessing only certain places, or appropriating to itself certain rights in a country which has not an owner, without being solicitous to take possession of the whole country. In this case, another nation may take possession of what the first has neglected; but this cannot be done without allowing all the rights acquired by the first to subsist in their full and absolute independence."

It is not a question of the right of the discoverer to possess all that he has discovered—that cannot be questioned; but of his right to extend the limits of his discovery, to go beyond to a natural boundary, or to include a place, beyond the limits of the discovery, that is necessary to the security of the discovered region.

Twiss speaks of "*the discovery of a part*," and of the lands beyond the part discovered, that may be regarded as attendant.

But in the case of Guiana the Spanish discovery embraced the whole of it. The great rivers that define its eastern and western limits—the Amazon and the Orinoco—and the Essequibo between them, had been entered and navigated, and landings made upon their banks. In the search for Eldorado Spain had sent many expeditions into the interior. It seems that as early as 1561 Aguirre, a Spanish explorer, passed by boat from the Amazon to the Orinoco, through that "double-ended stream, the Casiquiare," and down the Orinoco to the sea. The Amazon had already been followed to its mouth by other Spanish explorers, and the entire seacoast had been traced, thus completing the circumnavigation of Guiana.

These acts, we maintain, effected not only a discovery, but an appropriation of the whole province; but, if they can be treated

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only as completing the discovery of the province, they at least prove discovery of the whole of Guiana; and the settlements afterwards made are to be taken as an entry upon a part for the whole. It is not, then, a question as to "the extent of territory over which the discovery of a part gives rise to the right of occupancy," for here was no discovery of a part. *No other nation has ventured to claim the discovery of any part of Guiana.* The Dutch title and the British title must be rested upon Spain's abandonment or upon a conquest and cession.

Our object here is to show that Spain's settlements and all of her acts of sovereignty had reference, not to *localities* in Guiana, but to Guiana. The world at that time was afire with the lust of gold, more than of fields. It was Guiana—not its borders, not localities—the possession of which was sought. The Eldorado, whose fabled riches drew Raleigh and other adventurers again and again to the Orinoco, was in the interior; every recorded attempt to reach it was from the Orinoco, and that entrance was promptly occupied by Spain.

Santo Thome, often attacked, sometimes destroyed, always restored and strengthened, was declared by the acts of all European navigators to be Eldorado's gateway, and its destruction a condition of every successful foray into the interior.

Can there be found, in this shortly told story of Spain's relations to Guiana, anything that can be made the basis of an inference that she intended to or had abandoned any part of the province? On the other hand, did not these facts make it plain to every other European nation that any settlement by any of them in Guiana would be an invasion of Spanish territory? In fact all the expeditions of other nations that went there went in contemplation of an armed conflict with the Spanish forces. Spain complied with the conditions named by Westlake (*ante*, pp. 204–5); made known her "intention of deriving the full benefit" of her discovery. The Dutch did not enter "under a reasonable belief that

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it (the province of Guiana) had not been appropriated by a foreign power." Spain's title was not "sprung" on them.

Having now considered the rules relating to title by discovery, and the perfecting of that title by an actual occupancy, let us next see how the rule as to occupation has been applied by the Great Powers; what they have regarded as a sufficient occupation of new countries, and the constructive reach they have given to their settlements. This subject is discussed by Chief Justice Marshall in the extracts we have given, but some further illustrations may be useful.

We affirm that no one of the great nations that participated in the settlement of America ever allowed, as applicable to its own discoveries and settlements, the limitations which Great Britain seeks to apply to the Spanish settlements in Guiana.

Edmund Burke, speaking of the European settlements in America, in 1757, said:

"We derive our rights in America from the discovery of Sebastian Cabot, who first made the Northern Continent in 1497. The fact is sufficiently certain to establish a right to our settlements in North America." (Winsor, Nar. and Crit. Hist, vol. iii, p. 1.)

But Great Britain effected no permanent settlement within the limits of the discovery until 1607, when the colony at Jamestown was founded—followed by Plymouth in 1620. More than a full century elapsed after discovery before Great Britain effected her first permanent settlement in North America.

These English settlements were, for a long time, mere spots on the coast, many hundred miles apart, and reaching only a few miles into the interior. And two centuries later, down to the era (say 1850-60) when transcontinental roads and railways became near certainties, the explorer might journey for a thousand or fifteen hundred miles west of the Mississippi and in the corresponding portion of Canada without encountering traces of civilized man, and in constant peril from unsubjected savages. Down to the period of the discovery of gold (1848), the Pacific coast,

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north of what is now San Francisco, for some thousand miles had no white inhabitants save two or three small settlements, as at the mouth of the Columbia, and in the Vancouver region, with one or two Russian posts farther north.

In 1845 an Englishman could have entered from Canada and gone to Mexico without encountering a single white man, unless it might be the Mormons at Salt Lake City. A Russian could, in the same way, have traversed British Columbia from Alaska to Winnipeg.

In 1870 the vast continent of Australia, which the English had held or claimed to have held for one hundred years, had never been traversed from east to west; only one or two attempts at exploration had reached over a hundred miles from salt water; even its coasts, except in one or two stretches, were virtually unknown and unvisited. Leaving the coast settlements, the explorer could go fifteen hundred miles in almost any direction towards the interior without touching ground previously trod by a white man, and if he could reach the northern or western seacoast he would, in most parts, find no white man nearer than those whom he had left. The area of the continent of Australia is 3,000,000 square miles, about eight times that of Venezuela.

"Western Australia" has an area of 975,000 square miles (two and a half times that of Venezuela), but in 1892 its population was only 60,000. The newspapers of a very recent date contain a report of an address delivered by M. de Rougemont before the Anthropological section of the British Association, in London, in which he gives an account of his long residence among the Indians of the Cambridge Gulf region of Australia. He found there a vast region into which no trace of British occupation or influence had penetrated.

Yet no one supposes that these uninhabited stretches constitute *terra nullius*, or unpossessed land, open to be acquired by whatever nation might choose to go there. For they formed part of a territory which, as a whole, the dominant nation possessed.

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The whole Oregon dispute, from 1817 onwards, was based by both sides upon the proposition that all the northwest belonged to England or to the United States, save only the seacoast strip which Russia held; and they consecrated this idea by the boundary treaty of 1846.

This division of 1846 rested on the rights of 1817 or earlier; yet even in 1846 the entire partitioned region was less marked by the white man's presence and the white man's power than Guiana had been marked by Spain in 1620.

The English view about effectivity of occupation is also specifically illustrated in New Zealand. The area of the two islands is a trifle over 100,000 square miles, that is, almost exactly the same as that of the Kingdom of Italy, including Sicily. In 1843 its European population was 13,000, collected in a few centres (Stanford, p. 578). But England has always insisted that it had a title to the two islands by "occupation"; and it took this ground during the first year of actual occupation.

But we have specific instances of the recognition by England and Holland, in dealing with America between 1580 and 1680, that a new country held as a whole is, in law, deemed to be "occupied" in all its parts, though its actual settlements are few and far apart. The value of such a recognition by our two opponents, for that country and at that time, is obvious.

Raleigh's charter was dated March 25, 1584, and confirmed by Parliament, with some modifications, in December, 1584 (Maine Hist. Soc. Coll., N. S., ii, 172; Jeze, p. 126, note). It named no *locus*, but purported, in the language almost invariably used for two hundred years and substantially copied from the Bull of 1494, to authorize him to plant colonies upon "such remote, heathen and barbarous lands, not actually possessed by any Christian prince nor inhabited by Christian people," as he might discover. But what is the limit of the "possession" secured by settlement? The patent proceeds to express English official views in the same way that the Gilbert patent of 1578 had expressed them. It

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authorizes him, in language repeated from Gilbert's patent, to "repel" all persons who come to inhabit within *two hundred leagues* of the places where he or his colonists should make their dwelling, and gives him "jurisdiction" within those limits.

These two charters were given by Queen Elizabeth; the one two years before and the other four years after the announcement by her of Great Britain's position, as given in the British Counter-Case (p. 44).

Such was England's view of the "scope" of a settlement and the title it would confer. Now from Santo Thome to the Essequibo was about one hundred leagues; that is, *half the distance named in the English charters;* and other Spanish occupation soon much diminished that distance.

On April 10, 1606, on the petition of Hukluyt, James I. granted to new companies, successors of Raleigh's original, the territory from 34° to 45° latitude; that is, from Cape Fear, at the southern boundary of North Carolina, to New Brunswick;—from 34° to 40° to the "London" or Virginia Co., and from 40° northward to the *northern*, then or afterwards the "New England Co.," established at Plymouth, New England (Palfrey *Hist. N. E.*, i, 190, *note*). These grants covered, say 760 miles in latitude, and over 1,100 on the coast (Winsor, iii, 127). But the only settlements to hold it were those on or close to the James.

If this goes beyond the just limits of the law of that period, it is not for Great Britain to say so. Her views of international law ought not to be wholly governed by her interests. It certainly goes far beyond any claim that can arise in reference to Guiana. For it is one thing to hold a width of 760 miles by one group of settlements at its middle point, with no other settlements by the claiming nation on the whole continent—which is the case of the King James and Hakluyt charters—and it is quite another thing to assert against Spain, possessing and holding virtually the whole northern part of South America, that a corner piece, itself containing settlements and frequently overrun by its

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expeditions, was *terra nullius*. It should also be kept in mind that when the Dutch settled at the Essequibo, Portugal was under the Spanish crown, and the Portuguese settlements on the Amazon are therefore to be accounted at that time as Spanish settlements.

When we read these three English charters we must agree that the Spanish claim for Guiana *falls far within the doctrine of the period as asserted and put in practice by England.*

It is true that it might be physically possible for another nation to settle on a part of one of these large tracts and maintain its possession for a long term of years; and in such a case it would get a title. But it would be by prescription, in derogation of the first, and adverse to it; it would not be an *occupation* as of *terra nullius.*

Between 1626 and 1670 the question of the limits of attributive legal possession and right beyond an actual settlement arose between England and Holland, the latter claiming on behalf of the very Dutch West India Company which made the Guiana settlements.

Here, therefore, we have our two consecutive opposing interests declaring the law of the period upon the questions we have to consider; and while they differed as to the application of the rules and neither was always consistent, yet they agreed that a settlement, small in actual extent, would constitute *occupation* of a large region if *it had no previous occupant*, actual or constructive; that is, if it were *terra nullius.* The documents we shall refer to are printed in "*Documents relating to the Colonial History of the State of New York,*" vols. i, ii, published by the State, and edited by Mr. Brodhead. Some of the papers are also in *Aitzema.*

England claimed title from Carolina to the extreme north by virtue of the discoveries of Cabot.

Virginia claimed, under the first English charter, of 1584, two hundred leagues north from the James River settlement in Virginia, and under the second charter as far as Halifax.

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Now the mouth of the Hudson River (New York) is a little less than one hundred leagues (three hundred miles) from the Virginia settlement.

In 1620–21 England had established Plymouth Colony on Massachusetts Bay, a trifle under two hundred miles from New York, in a direct line, and about three hundred by water along the coast. The Royal Grant of Nov. 3, 1620, to *The Council for New England*, was from 40° to 48° latitude, and from the Atlantic to the Pacific; the colony at Plymouth, Mass., got its territorial rights by a subgrant under this (June 1/11, 1621), approved by the King (Palfrey, *Hist. New Eng.*, i, 190–4; Winsor, iii, 275, 295), as did also the colony of Massachusetts Bay on March 19, 1628 (Palfrey, i, 288, 290; Winsor, iii, 309–10).

Hendrick Hudson, in 1609, was the first white man to enter New York Harbor and the Hudson. After some inconsiderable efforts the Dutch West India Company settled "New Netherland," now New York. Their main settlement was where New York City now is, but after a time they built small forts as far east as the Connecticut River, "took possession" of Long Island and established some villages at its western end (Brodhead, Docs., vol. ii, pp. 133 *et seq.*).

The English antagonized them from the outset. Before 1620 they had warned off the few Dutch at Manhattan (Palfrey, *Hist. New Eng.*, i, 236); and in 1622 the English Government addressed a formal remonstrance to the States General "against intrusions in New England" (*ib.*, 237). In 1627 the Plymouth Governor warned the Dutch that the Plymouth territory reached to 40° latitude (a few miles north of the southern boundary of Pennsylvania and about one hundred and fifty miles south of New York), and forbade them to intrude upon it. The English also, but after the Dutch had actually made their permanent settlement, approached it as far as Providence and New Haven, the latter seventy miles from New York (*ib.*, 236). They took possession of Long Island, tore down the Dutch Company's coat-of-arms from their posses-

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sion posts, and set a fool's head in their place, and founded two villages at the east end of Long Island (Brodhead, Docs., vol. ii, p. 135).

Each of the contending parties claimed priority of discovery for its nation; but *each also claimed that its settlement gave it, in law, the possession and the title to all the unsettled land between the actual towns of Plymouth, New York and Jamestown.*

The discussion just referred to was terminated by what was called the "Treaty of 1650," that is, a local agreement forced upon the Dutch by the strength of the New England colonies. This agreement secured to the English a peaceful occupation *east* of the Connecticut, though it did not formally recognize their title. (*See* Brodhead, Docs., vol. i, pp. 459, 541, 567, 611).

In 1660 the discussion between the two governments became acrimonious; the principal papers are in *Brodhead*, vol. ii, and *Aitzema*. The controversy was ended in the general war, when England conquered New Netherland, and the peace of Breda, which terminated it (1667), left this region in the possession of England. But the papers exchanged in the course of the discussion make it clear that both parties admitted as sound certain principles of law, among which are these:

Both parties claimed by right of discovery; the English under Cabot and the Dutch as originally subjects of the King of Spain, and as holding the right of Spain by the cession contained in the peace of Munster (1648). Neither of these discoveries was followed by any occupation north of Florida or Virginia until 1600; that is, for more than a hundred years.

Each also relied on *occupation*, after 1600; and they referred both to *occupatio* or primitive occupation of a *terra nullius*, and long continued occupation constituting title by prescription. They both asserted or admitted that one or a very few actual settlements would or might constitute, in law, a possession or occupation, perfecting title to a large region of *terra nullius*. This, they conceived, did not apply to the case of a nation which was

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the *second* to make its entry on lands which the rule had already placed in such constructive possession of another; such second entry was in the nature of a dispossession; and it extended in law no further than it did in fact. When, in the course of discussion, the shoe pinched a little on the one party or the other, neither was very consistent; but the papers show that each side appreciated the *law* to be as we have stated it.

On November 5, 1660, the Dutch West India Company sent to the States General a long account of the controversy, as a basis for complaints about the English usurpations.

New Netherland originally, they say, began at latitude 38°— which is in Virginia, south of Washington, and half way between that city and James River, the seat of Raleigh's colony. Its true northern limit, they allege, included Cape Cod; that is, it reached to Massachusetts Bay, which they had entered and explored. The paper, in Brodhead, Docs., vol. ii, pp. 133–134, says:

"This province of New Netherland was then immediately occupied and taken possession of by the said Company, *according as circumstances permitted, as is the case in all new undertakings.** For which purpose they caused to be built there, since the year 1623, four forts, to wit: two on the North river, namely, Amsterdam and Orange; one on the South river, called Nassaw, and the last on the Fresh [Connecticut] river, called the Hope. From the beginning a garrison has been always stationed and maintained in all these forts.

The Company had created these forts both Southward and Northward, not only with a view to close and appropriate the aforesaid rivers, but likewise as far as title by occupation tends, the lands around them and within their borders (being then about sixty leagues along the coast), and *on the other side of the rivers,* to possess, to declare as their own and to preserve against all foreign or domestic nations, who would endeavor to usurp the same, contrary to the Companys will and pleasure."

They intended, they say, to build forts behind Cape Cod, but their circumstances did not permit of this, and they never did it.

* The phrase is a happy one to express the requirements of the law; and therefore when Spain, beginning with true discovery, and ending with making the country Spanish, progressed with a vigor which has astonished the world, it complied with the strictest rules of the law. The Dutch intruded in Guayana and acquired a title; but conquest, cession, or prescription supports this, not *occupatio.*

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The New England English have usurped upon them, claiming under a patent from Charles I.; but this they assert cannot displace the earlier title of the Dutch. Elsewhere the Dutch Co. mentions 41½° as their limit.

Such an extent of right from a single settlement was evidently then a familiar if not an accepted doctrine; but a prior *occupatio* based on the James River settlement was impliedly admitted to be extensive enough in law to restrict the later New Netherland claim.

But even in that view the Dutch say that they had a better title; for they came to America while "subjects of the King of Spain, first finder and founder of this new American world, who by the conclusion of the peace" (Munster, 1648) made over to them his title. But this argument, which extended Spain's right by discovery to the whole of the new world, they admit to be "rather forced," and is, they say, unnecessary, for they have a title of their own as "first discoverers and possessors."

January 21, 1664 (*ib.*, p. 226), they ask the States General to fix the limits of New Netherland "along the coast from 37½ degrees unto 41½, and, furthermore, landward as far as men can travel." Latitude 37½ degrees marks, virtually, the actual Virginia settlement; 41½ degrees means Plymouth, that is, their view is that the first *occupatio* (which was what they claimed) is displaced by the second comer only so far as the latter physically extends, which is good law.

Sir George Downing, British Ambassador, sent a memorial in reply. In answer the States General, on February 9, 1665, transmitted these comments, addressed to them by their Committee on Relations with England (*ib.*, p. 325):

"The English have no other title to the possession of what they hold; namely, New Belgium, than those of this nation have to New Netherland; to wit, the right of occupation; because all those countries being desert, uninhabited and waste, as if belonging to nobody, became the property of those who have been the first occupants of them. 'Tis thus the English

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have occupied, and this is the title by which they possess New England, as those of this nation, New Netherland. The right which the English found on the letters patent, wherein their king grants such a vast extent to the limits of the English so as to include also all the possessions of this nation, is as ridiculous as if your High Mightinesses bethought yourselves of including all New England in the patent you would grant to the West India Company. Therefore, a continued possession for such a long series of years must confer on this nation a title which cannot be questioned with any appearance of reason."

The reply of the British Ambassador, April 7, 1665 (*ib.*, p. 332), has been used in another connection (*ante*, p. 193). He asserted that the English had entered under patents, and that their settlements were to be taken as a possession of all lands within the bounds described in the patents; that it was not necessary that every part should be effectively occupied.

The States General rejoined (*ib.*, p. 379):

The patent of the King of England cannot "prejudice the rights of the subjects of other Kings and States;" neither does the patent prove possession.

The States General next turn to the question we have before us. They first quote (*ib.*, p. 380) from the British Ambassador's paper:

"'But,' he says: 'tis not requisite that men should inhabit every individual spot; it is enough that they had taken possession of a part within the limits of their Patent, and so acquire the remainder mentioned in their Patent.' This would well apply to any places which are not taken possession of, and *not embraced within those parts that are possessed;** but inasmuch as another has full fifty years' adverse possession, it does not enter into consideration, except to gloze over such violent usurpations as are here perpetrated; it being notorious that a thing can be possessed by only one. We shall willingly concede to the Ambassador, if the English in Ceylon or other Dutch Colonies, possessed a country as the Dutch have in

* *I. e.*, the rule of extended possession of a *universitas* applies to regions where there is no previous possession in law by another. But when it encounters previous possession by another it must yield; and it must do this equally whether that previous possession be by actual physical occupation, or be merely legal possession by the rule of extension from a settlement.

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the Northern part of America, that the sole right which is here claimed, should belong to them.'

That Great Britain gave her full consent to the doctrine that a possession of a part, in the name of the whole, effected a good occupation of the whole, and herself sought to apply the doctrine to Guiana itself, appears from this incident: In 1608 Harcourt visited the coast of Guiana and attempted to seize it for his sovereign. This is his account of the method used:

"I took possession of the Land, by Turfe and Twigge, in behalfe of our Sovereigne Lord King James; I took the said possession of *a part, in name of the whole* Continent of Guiana, lying betwixt the rivers of Amazones, and Orenoque, not beeing actually possessed, and inhabited by any other Christian Prince or State; wherewith the Indians seemed to be well content and pleased" (V. C-C., vol. ii, p. 55).

Upon the strength of this, the King (James I.), granted to Harcourt a charter, but, manifestly recognizing at the time that the territory west of the Essequibo was Spanish, he limited the grant to the territory between the Amazon and the Essequibo.

It appears also, from the later history of this incident, that the claim which Great Britain is now, as the successor of the Dutch, setting forward—that in the early years of the 17th century the coast of Guiana was *terra nullius* and not Spanish—Great Britain at that time did not maintain in behalf of her own subjects, who had attempted settlements on that coast.

Upon a protest from the Spanish ambassador, based upon the ground that Spain had before appropriated the region to which the Harcourt grant related, proceedings under it were suspended. Later (1623–25) a communication was addressed to the King on behalf of these patentees, setting forth reasons for maintaining the rights of England, in which it was said:

"Your Majesty's subjects many yeares since found that countrie free from any Christian Prince or State or the subjects of any of them." "Your Majesty's subjects with the faire leave and good liking of the native inhabitants have theis 13 or 14 yeares continuallie remayned in the said River [the Amazon] and also in the River of Wiapoco, being upon the

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same Coaste." "Your Matie hath bine pleased to graunte severall Commissions for these parts, and (w^h good advice of your Councell) hath granted two severall letters Pattents the one in the 11th of your Raigne of England, the other, the 17th." "The Count of Gondomer [the Spanish Ambassador] did bouldlie and most confidentlie affirme that his Master had the actuall and present possession of theis parts: whereupon he obtained of your Matie a suspence and stay of all our proceedings for a tyme. About two yeares and a halfe afterward the said Embassadour caused about 300 men to be sent into the River of Amazones, then to beginn the foresaid possession and to destroy the English and Dutch there abideinge" (V. C–C., vol. ii, p. 55).

In 1626 Harcourt, in a new edition of his "Relations" gives this account of the incident (p. 7):

"And here I think it fit to give notice of the dealing of a *Spanish Ambassadour* (whilst he resided in *England*) against these men [the English colonists in Guiana], after he had procured them to bee altogether abandoned by their owne Country, by his false suggessions, and violent importunity."

These historical incidents illustrate the stretch that was given, both by Great Britain and the Netherlands, to the constructive possession attributable to a small actual occupation when the New World was being settled. No one of the great powers is more distinctly committed to the doctrine that vast stretches of unoccupied territory may be rightfully claimed by constructive occupation, as appurtenant to small settlements, than Great Britain. Nor has she ever failed, when the facts offered any justification for it, to put forward a title by discovery. In the present case she insists upon a very strict rule as to Spanish settlements, but she saves her record, in part, by demanding for herself the broad effect she has been wont to give to her own settlements.

Perhaps we should say a word here about the reasonable period, though we hold that if the discoverer is the first to make an actual settlement the question cannot be raised.

As we have suggested already, the thing to be done by the discoverer must be defined before we can say what time should be allotted for the doing of it. Is the thing to be done by the dis-

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coverer, in order to perfect his title to the whole region discovered, the sending of "a force or a colony to some part of the land intended to be occupied"—the entry upon a part for the whole—(as Hall says); or is it the bringing into use, by the discoverer, of the resources of the whole territory and the subjecting of all its savage inhabitants to his jurisdiction and control, as Great Britain now contends. If the rule is as first stated, and 1500 is taken as the date of the discovery of Guiana, Spain sent out a force to that region as early as 1530, and in 1591 established a permanent settlement.

This was a very much earlier actual occupation after discovery than that made by Great Britain in North America—the timeliness and effectiveness of which she has asserted and maintained.

But if the discoverer cannot enter upon a part for the whole, but must appropriate the resources and subject the inhabitants of the whole region in order to perfect his title, the reasonable time during which no other nation can intrude must be greatly extended. And, in view of the slow development of the British colonies in North America, it can hardly be contended here that Spain should have appropriated the resources of the whole of Guiana and subdued all of its savage tribes before 1613, which is the date assigned by Great Britain to the first appearance of the Dutch in Guiana. Such a demand would be preposterous. The colonization of America did not proceed on such a schedule.

Is it to be claimed here that Spain lost Guiana because within *twenty years* after her first permanent settlement—if Santo Thome is to be taken as the first—she had not used the resources of the entire region, and subdued all of its savage tribes? Santo Thome, settled in 1591, was a timely first settlement; and can the entry of the Dutch in 1613 be defended upon the ground that Spain had forfeited her inchoate title, because she had not, within twenty years, so ex-

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tended her settlements as to effectively occupy the whole of Guiana? Upon any conceivable estimate of the "reasonable period," the Dutch entry into Guiana was premature and wrongful.

As we have seen, the British Case concedes that all of the conditions and circumstances affecting the territory and the discoverer are to be allowed for in determining whether he has been reasonably diligent.

Of some only of these retarding conditions we shall speak briefly. In the aggregate they were so great that, but for the stimulus received from the belief that fabulous stores of gold were to be found, they would have further delayed the settlement of the New World for at least a century. The seas were uncharted; no coast lights gave friendly warning. The ships were, at the first, so frail that one like them could not now find a crew, even for a coast voyage, without a convoy. A voyage from Cadiz to Santo Thome occupied from two to three or more months, and one hundred tons was a large cargo.* All of these wild lands were peopled by wilder men. Every tree and jungle was a citadel of fear. The painted brave, the poisoned arrow, the scalping knife, the fire—for the torture or for the feast—and the burning home, were waiting in fact, or in the fears of those who were sought as colonists. In Guiana a Spanish force of 470 men was repulsed by the Indians with a loss of 350. In St. Lucia a British colony was utterly destroyed by the Caribs. In all the American settlements the colonists carried their rifles to the

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* "The course from here (Holland), thither and back, is very much easier than from Spain, for it takes our ships usually six weeks or two months to sail from here thither." (See U. S. Com. Rep., vol. ii, p. 31.) Cabeliau set sail from Trinidad "for this country" (Holland) on October 13, 1598, reached Plymouth, England, Dec. 11, and Middelburg, in Zeeland, Dec. 28, 1598; the voyage thus taking about 11 weeks. On the way they spoke, in the West Indies, an English galley of 25 tons. Cabeliau's vessels were the *Zeeridder*, 160 tons, and *Jonas*, 120 tons. (B. C. I, p. 18.)

Considerable delay was usually experienced in getting from the Orinoco's mouth up to Santo Thomé. Cabeliau spent 20 days in ascending the Orinoco to Santo Thomé—about forty (Dutch) miles, with a *ship* of "about 72 tons," a yacht "of about 18 tons," and another yacht; altogether carrying "about 50 persons." (B. C. I, p. 20.)

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fields and to the meeting house. The forests of Guiana were dark and limitless, and the making of fields was a work that bowed the backs of many generations of pioneers, even in the northern colonies. In the tropics the woods had no paths, save the streams, and even these had sometimes to be cleared with the axe for the passage of a canoe. The interlacing and matted vines stopped the feet as effectually as a stone wall. The wild vegetation speedily recovered the possession of which the settler had by vast labor robbed it -if he at all relaxed his vigilance. To cut a path through the forests was, as Courthial said, a work for a colony, not for a man. Piracy, attracted by the gold that Spain was taking from her colonies, threatened all of her ships and all of her settlements. The Dutch West India Company counted these captures as its richest perquisite. Raleigh apparently thought himself entitled to divide this source of wealth with the Dutch. In 1614 the Dutch with the Caribs invested Trinidad (B. C., p. 22). In 1618 Raleigh destroyed Santo Thome (B. C., p. 49). In 1629 the English and the Dutch made a combined attack on Santo Thome (B. C. I, p. 70). In 1637 the Dutch and the Caribs captured, burned and plundered Santo Thome (B. C. I, p. 88).

These acts delayed Spanish settlement, and it would seem to be contrary to familiar rules of law that the Dutch and British, who so much contributed to the delay, should acquire an advantage from their own wrongs.

About the year 1748 a diplomatic controversy between England and France, as to the ownership of St. Lucia Island, was referred to commissioners for adjustment. The English had settled there in 1639, but were driven out the following year by the Caribs, many of the settlers being killed. The French seized the island in 1650, upon the claim that Great Britain had abandoned it. Phillimore (vol. i, p. 368), says,

"the English negotiators contended that their dereliction had been the result of violence * * * and that it was not competent for France to

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profit by this act of violenceand surreptitiously obtain the territory of another state."

Well, was not Spain's colonization of Guiana also retarded by these Caribs—set on often by the secret machinations of the Dutch, and by Dutch attacks upon the Spanish posts, and by the piratical raids of Raleigh? Was not Spain's dereliction the result of violence? And have we not here an attempt to profit by this violence, and to "surreptitiously obtain the territory of another state"? Can the Dutch, keeping themselves under cover, send the Caribs to destroy a Spanish mission, and then base a claim to the territory upon the failure of Spain to re-establish it promptly? England's settlements on the New England coasts grew, not out of the attractiveness of that region, but out of the unattractiveness of England to men who valued religious liberty more than personal comfort and riches. Men were punished for crimes by deportation to the colonies. The slave trade was put under requisition for laborers that Europe could not supply. This was especially true of the tropics, where white men could not do the work of the fields. The Dutch Guiana colonies depended absolutely upon their slaves to work their plantations, so much so that the slaves far outnumbered the colonists and, though unarmed, were a constant menace to the peace and safety of the settlements. So inexorable was the demand for slaves that the Dutch stimulated the Caribs to make war upon the interior tribes, that the captives taken might be enslaved. Europe was not wanting "lands for the landless." England had appropriated an extent of territory so great that free lands of the best quality were offered, three hundred and seventy-five years after Cabot's discovery, both in the United States and Canada, to all who would settle upon them. Bureaus were established and agents sent to Europe to seek for emigrants, and the supply of free lands has not yet been fully exhausted. No other nation was hindered or kept out of the present use of lands that it was then waiting to cultivate. So far as there were contentions, they were for power, for points of future advantage, for gold—

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not for settlement. The Dutch were not kept by Spain out of a territory they were ready to settle. The small region they had seized as an act of war, on the coast of Guiana, was in excess of their ability to settle, and so remained up to the cession to Great Britain, two hundred and one years after the date of the first Dutch settlement, as fixed by the British Case.

It is to this period and to these conditions that the doctrine of a "reasonable time" is to be applied; and in the further light of the practical definition given by the other great nations in those parts of America claimed by them.

Before concluding this discussion, we think it well to say that it is the law and the international usage of the 16th and 17th centuries, and not the stricter modern view of occupation, expressed in the Berlin Convention of 1884, that must govern in this case.

This is admitted in the British Case (p. 154) to be the rule as applied to the reasonable period given for actual settlement, and by the same reason it must be the rule as to the character of the settlement required, and the constructive extent given to such settlements.

Ch. Soloman, in his "Occupation of territories without an owner," takes the view that the occupations effected in former times cannot be considered by the standard of principles admitted in Berlin, but according to the principles ruling at the time. As an example, the author presents the case of the Caroline Islands, and asserts that the question was settled with as much wisdom as impartiality by the Pope. Germany alleged the existence on the islands of commercial establishments of her subjects; the steps taken by the founders of such establishments to induce the German Government to establish a protectorate over the island; the absence of sovereignty of Spain, who did not have even subjects engaged in commerce in that region; the want of indications to the powers that there was a nation exercising right of sovereignty over the territory, and the participation of Spain in the Berlin Congress. The exceptions taken by Germany and Great Britain in 1875 were

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also alleged respecting the case of a consul having claimed as Spanish subjects some natives of the Caroline Islands, saved by an English vessel from a shipwreck, an exception over which Spain remained silent, as though she did not pretend to rights of sovereignty over those islands.

Spain alleged that effective occupation was not applicable to the island of Tap; first, on account of its geographical position; second, because it was not an object of new occupation. There had been a prior occupation; Spanish officers were on land engaged in building a small fort when the German officers arrived; the Spanish flag had floated over the Caroline Islands since 1526. From that time forward and in the 16th, 17th and 18th centuries, Spain had sent to those islands a great number of military expeditions and many religious missions, and had made repeated attempts at colonization. In 1731 the Philippine missionaries succeeded in reaching the archipelago. Spain had the monopoly of missions, the diffusion of religion, and of the planting of civilization in those remote islands. In 1885 the frigate *Velasco* visited the island of Tap, and the Minister for the islands informed the Senate that it was the intention to renew those visits, and that the manifestation of sovereignty seemed expedient; that the natives knew the name of His Majesty Alfonso XII., and knew also that they were under Spanish control.

Appointed as a mediator, the Pope recognized the sovereignty of Spain over the Caroline and Palaos Islands, based on the fact of discovery, and the acts performed there by the Spanish Government, though these acts did not give it the character of effective occupation.

In 1843 Mr. Upshar, Secretary of State of the United States, in a letter of instructions to Mr. Everett, our Minister to Great Britain, said. (Wharton, Int. Law, i, 5):

"How far the mere discovery of a territory which is either unsettled, or settled only by savages, gives a right to it, is a question which neither the law nor the usages of nations has yet definitely settled. The opinions of

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mankind, upon this point, have undergone very great changes with the progress of knowledge and civilization. Yet it will scarcely be denied that rights acquired by the general consent of civilized nations, even under the erroneous views of an unenlightened age, are protected against, the changes of opinion resulting merely from the more liberal, or the more just, views of after times. The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations as understood *at that time,* and not by the improved and more enlightened opinion of three centuries later."

But, if it is still said that the whole of Guiana cannot be claimed by Spain under her title as a discoverer, notwithstanding the law of that time and the practice of the nations in the settlement of America, surely the limited claim here involved cannot be denied.

In the Case of Venezuela (vol. i, pp. 231, 233; paragraphs 9, 17) there are described as having the characteristics of geographical units, certain regions less than the whole of Guiana, to which it is claimed the occupation of Spain, at the least, extended. The British Counter-Case denies that either of these regions was a geographical unit, and denies a Spanish actual or attributive occupation, with this reservation as to the region described in paragraph 9: "and except so far as Mission stations constituted occupation, it is not true that Spain occupied any part of such region." (B. C.-C., pp. 139-140; paragraphs 9, 17.)

It is further said that the Dutch "occupied or controlled the rest of that region."

The Spanish missions constituted an official occupation in a most distinct sense, and looked directly to the use of the soil for crops and grazing. It is a small claim that Venezuela—the successor of the discoverer—puts forward when she suggests these limited areas as the scope of Spain's occupancy and title. If the British claim to Barima were granted, not one foot of the sea coast of Guiana would remain to the discoverer.

If Venezuela's claim is allowed to the Essequibo she will then take less than one-third of Guiana.

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Before the Dutch settled in Guiana Spain had occupied the region to the north and west of the Orinoco. She had traversed the Orinoco from the sea to its head waters, and from its sources to the sea. She had settled Trinidad as a base of supplies and defense for her contemplated river settlements, and for her projected occupation of Eldorado. She had founded Santo Thome at the most available point on the east bank of the river—above the marsh lands—as a nearer base for her inland occupation. All the region to the north and west of the Orinoco River she had actually appropriated. Spain had also appropriated the Pacific coast, and her occupation there cut off the approach of other nations from that direction to the head waters of the Amazon and of the Orinoco; while her own people came from the Pacific to the Atlantic by way of those rivers. Portugal, which from 1580 to 1640 was under the crown of Spain, had occupied and appropriated the Amazon, and thus Spain held the approaches to Guiana on three sides, when the Dutch entered the Essequibo. But Spain's coast occupation was not limited to the Amazon and the Orinoco. She had occupied the Essequibo before the Dutch came.

It will hardly be denied by Great Britain that the line of the Essequibo might have been well and rightfully claimed by Spain when the Dutch entered there, if, as we claim, there had been an earlier Spanish settlement on the Essequibo, even if it was not then maintained. Spain was, in other places, and by other public and effective acts, prosecuting and proclaiming her purpose to occupy Guiana, and the withdrawal for a time of the Essequibo settlement did not work an abandonment. In view of her own contentions in the St. Lucia and Falkland Island cases, Great Britain can not be heard to say that it did. The evidence of a Spanish settlement in the Essequibo is, we think, complete.

The constructive effect which Great Britain gives to the Dutch settlement on the Essequibo certainly cannot be denied to the earlier Spanish settlement there, and, given that scope, the whole interior was in Spanish occupation.

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But if there had never been a Spanish settlement on the Essequibo, the settlements at Trinidad and Santo Thome, taken in connection with the explorations and acts of dominion by Spain on the coast and in the interior, surely had a larger effect than to give to her, as the discoverer of Guiana, a mere strip on the eastern bank of the Orinoco below the Caroni, and even that strip broken on the lowest stretch of the river, so as to wrest from her the control of that great water way and isolate her settlements. It would be an unprecedented application of the rules and usages of the time to limit Spain to the Essequibo line. To give less effect than that to her discovery and occupation would be to say that discovery is so reprehensible that no large constructive extension of its bounds can be allowed; that all such beneficial constructive effects are reserved for the meritorious second comer.

We have limited our discussion under this head to the question of Spain's title by discovery, and have chiefly referred to such Spanish explorations and settlements as antedated the first Dutch settlement on the Essequibo. Our purpose has been to show that Spain's title covered that region, and that the Dutch could not enter there as upon lands *terra nullius;* that they could only displace Spain's title by conquest, by cession or by prescription. At a later period in our argument we will discuss the limitations that attach to those forms of title, and the extent of territory that must be allotted to Spain, even if her just claims as the discoverer of Guiana are ignored.

We have maintained, we think, these propositions:

FIRST.—That Spain discovered and took a good ceremonial occupation of Guiana, which was then a distinct geographical unit, a region every boundary of which could be traversed by a continuous boat journey; that the geographical separateness of the region was further emphasized by the fact that in its centre the Eldorado was, in the belief of the time, located.

SECOND.—That Spain's discovery and ceremonial occupation of Guiana were followed, within a reasonable time, by the organiza-

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tion of a number of strong and costly exploring expeditions, which fought their way against the Indians into many parts of the interior, entered every important river and coasted every boundary, and that the avowed purpose of all these labors was the occupation of Guiana.

THIRD.—That before any settlement within the bounds of Guiana had been made by another nation, Spain had established permanent settlements on the Island of Trinidad and at Santo Thome, had for a time maintained a settlement on the Essequibo, and had appointed a Governor of the "Province of Guiana."

FOURTH.—That these acts and settlements were, and were publicly known to be, a part of Spain's scheme for the occupation of Guiana, and, in the belief of the time, closed the only practicable entrance to the Eldorado in the interior of that Province.

FIFTH.—That Spain's purpose to occupy and hold Guiana, and her presence there, were so well known to the Dutch and to the English, that when they came there, with any intent to enter or to occupy, it was in the expectation of an armed conflict with Spain.

SIXTH.—That when the Dutch settled on the Essequibo, they well knew that Spain claimed Guiana, and especially had not abandoned her claim to Essequibo. They were at war with Spain and seized her territory. They held Essequibo just as they would have held Trinidad and Santo Thome if they had been able to maintain themselves there.

SEVENTH.—That Spain had perfected her title to Guiana by the rules of law and the practice of the nations then prevailing, and had never abandoned any part of it. But that even if Spain's acts were inadequate to confirm her title to the whole of Guiana, they were certainly adequate to confirm her title to the territory in dispute; that the Dutch could not therefore rightfully occupy, as *terra nullius*, Essequibo or any part of the disputed territory, and that any title acquired by the Dutch there must be rested either upon conquest, cession or prescription.

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EIGHTH.—That if by Spain's dereliction any part of her discovery became subject to appropriation by another nation, Spain's inchoate title was not lost until—and only so far as—that other nation first accomplished a competent, *actual* occupation.

We state here, for elaboration hereafter, these further propositions:

(A.) That as Spain was the discoverer and made the first settlements, she is entitled to claim the full benefit of every rule, giving a constructive extension to the limits of her actual occupation, before any of these rules can be invoked to aid the Dutch.

(B.) That titles by conquest, cession and prescription are not helped by the large rules of constructive occupation, but are strictly limited.

Before, however, discussing the boundary upon the theory propounded by Great Britain, namely, that Spain must be limited to her actual occupation, we desire to discuss the Dutch-British title; to show that it has its origin either in conquest, cession or prescription, and to point out the limitations of those forms of title.

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CHAPTER VII.

THE CONSTITUTION OF THE DUTCH WEST INDIA COMPANY AS BEARING ON THE QUESTION OF TITLE.

Allusion has already been made to the peculiar character of the Dutch West India Company as a private trading corporation engaged in the government of a colony. In order to establish fully the character of its acts as influencing the question of title, it is necessary to examine separately the constitution of the Company, the purposes for which it was organized, and the mode in which these purposes were carried out.

The Dutch West India Company was originally chartered in 1621, at the close of the truce between Spain and the Netherlands. Its charter was renewed in 1647, a year before the war came to an end.

The Company, as stated in its original charter, was created for purposes of trade. It was considered by the States-General that the maritime and commercial enterprise of the Dutch would be wasted if left to individual enterprise. It was in order to concentrate all the efforts of such individuals and to direct them in a single channel that the West India Company was formed. So says the preamble of the charter (V. C. vol. iii, p. 1):

"And being desirous that the aforesaid inhabitants not only be maintained in their navigation, commerce and trade, but also that their commerce should increase as much as possible, especially in conformity with the Treaties, Alliances, Conventions, and Agreements formerly made concerning the commerce and navigation with other Princes, Republics and nations, which Treaties we intend shall be punctually kept and observed in all their parts:

And we, finding by experience that without the common help, aid and means of a General Company no profitable business can be carried on, protected and maintained in the parts hereafter enumerated, on account of the great risks from sea pirates, extortions and other things of the same kind, which are incurred upon such long and distant journeys:

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We, therefore, being moved by many different and pregnant considerations, have, after mature deliberation of the Council and for very pressing causes, decided that the navigation, trade and commerce in the West Indies, Africa, and other countries hereafter enumerated, shall henceforth not be carried on otherwise than with the common united strength of the merchants and inhabitants of these lands, and that to this end there shall be established a General Company which, on account of our great love for the common welfare, and in order to preserve the inhabitants of these lands in full prosperity, we shall maintain and strengthen with our assistance, favour and help, as far as the present state and condition of this country will in any way allow, and which we shall furnish with a proper Charter, and endow with the privileges and exemptions hereafter enumerated, to wit:

I.

That for a period of twenty-four years no native or inhabitant of this country shall be permitted, except in the name of this United Company, either from the United Netherlands or from any place outside them, to sail upon or to trade with the coasts and lands of Africa, from the Tropic of Cancer to the Cape of Good Hope, nor with the countries of America and the West Indies, beginning from the southern extremity of Newfoundland through the Straits of Magellan, Le Maire, and other straits and channels lying thereabouts, to the Strait of Anjan, neither on the North nor on the South Sea, nor with any of the islands situated either on the one side or the other, or between them both; nor with the Australian and southern lands extending and lying between the two meridians, reaching in the east to the Cape of Good Hope, and in the west to the east end of New Guinea, inclusive."

The object of the charter was not to make that a public enterprise which had theretofore been private. The West Indian commerce of the Dutch was to be concentrated; but it was concentrated in the hands of a private corporation. Other corporations and individuals could only engage in it through and under the Company which had the monopoly.

The monopoly of trade so given to the Company did not give it any rights as against other States, or the subjects of other States, and asserted no rights on the part of the Netherlands as against other States or their subjects. The territory to which it re-

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ferred included the whole of North and South America, a part of Africa, the whole of Australia and the islands of the South Sea. At the date of the charter, a large part of this territory had already been taken up by various European States; and obviously the charter never meant, nor was intended to mean, a conveyance to the West India Company of rights which had been acquired by such States, except in so far as such acquisitions might be made from the enemy of the Republic as an incident of war. To infer otherwise would be to suppose that the Dutch West India Company was a gigantic scheme of land piracy, by which a private corporation created by the Dutch Government was to rob all the other States of Europe of the soil which they had acquired and occupied. It is true that proclamations issued later forbade all the world to trade with the countries named in the charter, but these proclamations, which, according to their terms, would have prohibited England, France and Spain from visiting or trading with their own colonies, otherwise than through the Company, must be set down as mere Dutch rhodomontade. The object and purpose of the West India Company in 1621 was the development of Dutch trade with Africa, Australia and the countries of the New World. While the company was ostensibly a trading company, it was also, from the beginning, used as a part of the military organization of the Netherlands in the war with Spain.

In the sixteenth and seventeenth centuries, at any time when a war was in progress, there was no more important incident of oversea trade than privateering. Merchant ships found it necessary to go armed for defense, and being so armed they took out commissions as privateers, and used their armaments for offensive operations as well. Privateering against Spain was the real source of the great profits of the Dutch West India Company during the Thirty Years' War. According to Bancroft (V. C., vol. i, p. 75, note):

"Reprisals on Spanish commerce were the great object of the West India Company. . . . The Spanish prizes, taken by the chartered

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privateers, on a single occasion in 1628, were almost eighty-fold more valuable than the whole amount of exports from New Netherlands for the four preceding years."

For the purpose of injuring Spanish commerce in the seas which it most frequented, and incidentally to enlarge the profits of privateering, the States-General, in the course of the war, relaxed its trade prohibitions as to that part of the American coast within the circuit of the West Indian Islands, including the Orinoco and the coast line extending around to Florida. These waters were known to all the world as the Spanish Main. The British Case appears to lay some stress upon these "Sailing Regulations," as they were called, as if they were in some sense the definition of a territorial frontier. Such, however, was not their character or purpose. They were simply the opening to privateering enterprise of a part of the territory in which the chartered Company had theretofore been given a trade monopoly, and their object, as stated in Article I (B. C., I, p. 73), was:

"In order to injure and offer hostility to the King of Spain, his subjects, and adherents, both on land and water."

For this purpose the Netherlands threw open to all its subjects those parts of the coast west of the Orinoco "in order there to carry on all manner of warfare by sea and by land against the King of Spain, her subjects and allies." (V. C., vol. ii, p. 20.) A share of the prizes taken in this region was, however, reserved to the West India Company. The mention of the Orinoco in these regulations only indicates that it was recognized as a centre of Spanish commerce in that region, which included also the important and neighboring ports of Carthagena, Portobello and La Guayra.

The charter was from the first essentially a war measure. Efforts had for some years been made to obtain such a concession, but the Dutch Government refused to grant any charter during the Twelve Years' Truce from 1609 to 1621, and the attempts of the Dutch to make colonies on the coast of Guiana before that

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date had been individual attempts, and had been checked, as in the case of the Corentin settlement, in 1613, by repressive measures on the part of Spain. As soon as the Truce was ended, however, the charter was granted (V. C., vol. i, pp. 69, 75). It doubtless contemplated the possibility that by the success of the Dutch arms during the war a foothold might be acquired at some point in the vast territories named in the Company's charter, in America, Africa or elsewhere, by conquest from Spain, a part of which might still remain in occupation at its close and be ceded by Spain in the treaty of peace, as was actually done, on the basis of *uti possidetis*. Ordinarily, such a foothold, if preserved at all during war, is preserved by a military occupation. The charter, however, having given the Dutch Company the trade monopoly in all territories that might possibly be subject to conquest, also provided for occupation by the West India Company, which was allowed to build "fortresses and strongholds, appoint Governors, soldiers, and officers of justice, and do everything necessary for the preservation of the places and the maintenance of good order, police, and justice" (V. C., vol. iii, p. 2). These are attributes of internal sovereignty, delegated by a Government for specific purposes to a private corporation. It was also allowed, within the limits named in the charter, to make "contracts, leagues and alliances with the Princes and natives of the lands therein comprised." The only limitation upon it was that "the representatives of the Company shall successively communicate to us and hand over such contracts and alliances as they shall have made with the aforesaid Princes and natives, together with the situation of the fortresses, strongholds, and settlements taken in hand by them."

These powers were renewed in the charter of 1647, and thereby projected into the period of peace following the Thirty Years' War, and they were substantially repeated in the charter of 1674, given to the new West India Company, which only terminated in

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1791, but limited in terms to the two geographical points of Essequibo and Pomeroon.

It will thus be seen that, under their charters, the West India Company held certain deputed and delegated powers over the settlements comprised in their charters and over the colonists of which these settlements were formed. It not only held these powers, but it exercised them. The authority over Essequibo and Pomeroon was thereafter entirely in the hands of the Company. The Dutch Government never interfered with it except to settle the occasional quarrels as to their respective powers between different Chambers of the Company. The States General had given powers of government to the Company, and they left them to the Company. The acts of the Company during this period, therefore, in the exercise of these powers were the acts of the Dutch Government. Its admissions and claims in reference to territorial rights were the admissions and claims of the Government. The Dutch title, whatever it may have been, could be asserted only through the Company. It was in fact asserted only by the Company, except on the three formal occasions when the Company applied to the States General to cause representations to be made to the Spanish Government by their Ambassador at Madrid, and upon all of these occasions the Company had already been acting directly by means of correspondence with the Spanish authorities on the spot.

Whatever Dutch claims, therefore, may be asserted to territory in Guiana, no such claim ever was, and cannot now be suggested apart from the Company, and the admissions of the Company are the admissions of the Netherlands themselves.

The programme outlined in the charter of the Company was substantially carried out. Dutch expeditions made incursions at various points in the Spanish territory, as on the Orinoco and in Trinidad, which, however, they did not hold. Under cover of these incursions, the Dutch established themselves at points to the eastward, including Berbice and Essequibo, in which latter river they

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found the remains of a Spanish fort ready to their hand, on the island of Kykoveral.

At the close of the war, when an adjustment came to be made on the principle of present possession, the westernmost of these establishments, as is clearly shown by the evidence, was this fort in the Essequibo, marking what was still called, as late as 1814, the "Establishment" of that name. It is conclusively shown by the evidence that at this date the Dutch neither held nor possessed anything to the west of the Essequibo.

By the Treaty of Munster, therefore, the "Establishment" at Kykoveral, with all the other possessions to the eastward, was ceded to the Netherlands, and, as will presently be shown, the West India Company expressly admitted that they held these possessions under a grant of the Spanish title.

As might be expected from the circumstances leading to the creation of the Company, the necessity for its existence, at least in the form in which it had been originally constituted, ended with the close of the war. Its first charter had expired, but was renewed in 1647, the limits remaining unchanged, and it was under this charter that the colonies in Guiana were conducted from the conclusion of the Treaty of Peace. In 1674 this charter expired, and the States General resolved to create a new Company. In their resolution they stated, (B. C., I, p. 174) as to the former Company that they had "observed that the affairs of that Company had, through many disasters, fallen into such a state that shareholders in the same have suddenly become unwilling to continue the aforesaid Company."

The charter of the New Dutch West India Company of 1674 was on an entirely new basis. It expressly changed the territorial limits. It said (B. C., I, p. 174):

"None of the natives or inhabitants of this or any other country shall be permitted, other than in the name of this United Company, to sail and trade upon the coasts and lands of Africa, . . . together with the places of Isekepe [Essequibo] and Bauwmerona [Pomeroon], situated on

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the continent of America, as well as the Islands of Curacao, Aruba, and Buonaire. . . . So that the further limits of the aforesaid charter shall be open to all the inhabitants of this State without distinction, to be navigated and traded in by them at their pleasure."

While the charter of 1621 took in the whole of the New World, the charter of 1674 was restricted on the mainland of South America, to two points, namely, Essequibo and Pomeroon. Beyond these two points the Company had no rights. The powers of government that were given them applied only to the management of the colony at these two points, and the separate naming of Essequibo and of Pomeroon, the latter a small stream less than forty miles away by the coast, showed that the names were used as specific designations of specific points, and could not be extended by any general interpretation to cover stretches of territory beyond the specific points so expressly named. The charter of 1674 constituted, on the part of the Dutch Government, a delimitation of the Company's frontier.

Under this charter and its renewals, always including the same specific points, and these only, the Company continued during the rest of its history. Of course, it could not take more than was granted under its charter. Nor could it extend its territories. It could not hold adversely to the government creating it, supposing the title to the adjoining lands to have been in that Government; nor could it hold adversely to Spain, if the title were Spanish except within its charter limits of Essequibo and Pomeroon. Its charter was renewed in 1700, 1730, 1760 and 1762, each time without change of limits on the west. The Company was dissolved at the close of the year 1791 (V. C., vol. i, p. 57), and its territories then reverted to the State; but whatever the State may have taken under this reversion, it could take no more than that which the charter had named, to wit, Essequibo and Pomeroon. The boundaries of this reversionary title were, at least by this time, definitely known.

Of course the Dutch Government could not take from the

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Company in 1791 more than the territory to which the Company held title, and the Company could not hold title to anything beyond its grant. If the Netherlands possessed territory at the Treaty of Munster beyond that defined in the charter of 1674, they did not give such territory to the Company. They must therefore, unless they abandoned it, have held it themselves. Yet the fact is indisputable that they never held, or imagined they held any territory except that which finally came to them by the reversion. There is no pretense that they ever held a title or claimed or exercised dominion otherwise than to the territory covered by the Company's grant. The Government never did an act, made a claim, or passed a measure, from 1674 to 1791, in reference to this territory otherwise than by or through the West India Company.

Under these circumstances, how can the Netherland's grantee, under a conveyance of the "Establishment of Essequibo," assert a claim to anything beyond the limits of the charter of 1674? She cannot contend that the Company held more than its grant. She cannot contend that the Netherlands held anything, or pretended to hold anything, except their reversionary interest in the Company's territory. Whence comes this British title, spreading out over about one hundred thousand square miles of land west of the Essequibo and the Pomeroon, when Great Britain's grantors held only these two specific "establishments"?

The British Counter-Case attempts to answer by the startling proposition that the territory was *terra nullius*, not only in 1648, in 1674, and in 1814, but even at the date of the Treaty of Arbitration, and that as Great Britain has now got possession of it, in defiance of the Agreement of 1850, she takes it as first occupant, even though her possession may antedate the Treaty only by a day. It says:

"Her Majesty's Government would be entitled to retain the whole territory up to the Schomburgk line, on the simple ground that at the date of the Treaty of Arbitration they were in possession, and that the territory in

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question cannot be shown to have ever belonged either to Spain or Venezuela."

The *terra nullius* theory is discussed in other parts of this Argument. Here it is only introduced to show one of the many difficulties it was intended to overcome. It makes its first appearance in the last part (p. 114) of the Counter-Case, and it may be regarded as the last resort in Great Britain's line of defense.

The British Case has, however, another answer to the question of the charter of 1674. This is apparently based on an entire misapprehension of the terms of that instrument. The Case states (pp. 28-9):

"In 1674 a new Chartered Company was formed *with the same* rights and *limits* as those possessed by the former Dutch Company. Pomeroon and Essequibo are specifically mentioned in the grant."

The above is directly contrary to the fact, as is disclosed by the most casual perusal of the provisions of the charter. The limits were distinctly *not* the same limits. The first charter had included the whole of the New World. The second charter included nothing on the mainland of America except Essequibo and Pomeroon. These points are not named, as the British Case seems to suppose, as mere descriptive or illustrative designations of parts of a larger region, but they are named as the limits of the whole grant as to the mainland of America.

While the charters of the West India Company gave to the Company certain powers of quasi-sovereignty within the limits stated in the charter, namely, Essequibo and Pomeroon, the West India Company, mindful of its character as a private corporation and of the commercial purpose of its existence, adopted an organization entirely in accord with this character and purpose. This organization not only as to the supervisory direction of the Boards at home, but also as to the executive management of colonial affairs on the spot, remained chiefly that of a trading company. The local head at first

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called "Commandeur," but later "Director-General" was in the nature of a General Manager. The local advisory body, when it came to be constituted, was a Court of Policy, and the duties of this board were what the name would imply. The functions of the General Manager and his advisory Board related almost exclusively to trade. Police powers he doubtless had and exercised in the colony itself. He took cognizance of offenses committed by the colonists. He settled their disputes, and made regulations for defense, for police, and for the general health and welfare whenever necessary. His relation to the colonists included that sort of disciplinary supervision which is necessary in a new country; but by far the largest part of his acts were, as might be expected, in furtherance of the purpose for which he as well as the Company existed, namely, the regulation and promotion of trade.

As the object of the West India Company was to make money, its interests were to a considerable extent adverse to those of the colonists. A constant struggle went on, which only terminated with the termination of the Company in 1791, for the profits of business in Essequibo. The Company engaged in agriculture to a limited extent, and as a rule rather disastrously. It had three or four plantations, on which sugar, coffee and indigo were more or less raised; but its main profit was from trade, and in order to derive a profit from that source, it was necessary to keep it in its own hands and to exclude the colonists. Wherever it saw a peculiar chance of making money out of a given trade, it reserved the trade to itself and prohibited the colonists from engaging in it. Numerous instances may be cited of such prohibitions, in fact the regulations in reference to trade were constantly changing to meet these considerations of possible profit to the Company. Thus, from time to time the colonists were excluded from the horse trade, the balsam trade, the trade in letter-wood, the Indian slave trade, the annatto trade, or the trade with the Orinoco, and only allowed to engage in it through the Company, or by paying a toll to the Company.

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As all the trade of the colony except that over sea was in or across the adjoining territory of Spain which is the subject of the present controversy, these prohibitions became operative upon the movements of the colonists in that territory, and the reserved trade, whatever it might be at a given time, was conducted by the Company's agents. For a long time it employed to carry on this trade certain old negro slaves, who were familiar with the paths of the forest and with the Spanish and Indian traders who were to be found there or beyond the forest in the savannas of Yuruari and Cuyuni, near the Orinoco. Later it employed Dutchmen, more or less, in this work. These employees were of three classes, the Outliers (*Uitleggers*), Byliers (*Bijleggers*) and Outrunners (*Uitlopers*). The Outliers remained at specified points, and constituted the so-called Postholders. The Byliers were their assistants, when they had any. The Outrunners were the employees whose duties corresponded to those of the old negroes above mentioned. Except the diminutive garrison, which in 1769 comprised only 39 men, the crew of the Company's yacht, which watched the mouth of the two rivers, and the Master Planters in charge of the Company's plantations, these were all the persons in the Company's employ. They were official in the sense that they were trading employees of the Company; but they exercised no functions of government.

It has been stated that the Company from time to time reserved to itself certain branches of trade. This reservation, however, only had reference to its own colonists of Essequibo, whom it regarded, and not without reason, as its business competitors. The prohibition of trade did not apply to anybody else, because the General Manager of the colony did not pretend to have either the authority or the ability to enforce such a prohibition against anybody else. The Spaniards and the Indians were, of course, never regarded by the Commandeur or by anybody else, as being affected by such prohibitions. Neither were the other foreigners who frequently visited and traded in the territory, even as far in

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the interior as the Pariacot Savanna, especially the French and the English.

In order to enforce the trade prohibitions and other regulations, it was necessary that the Commandeur should know what the colonists were about and their movements to and from the colony. In the exercise of the disciplinary authority which he had as General Manager of the settlement, the Commandeur required them, accordingly, to obtain permission to go out of the territory. This permission was evidenced by a so-called passport. They were simply permits to be absent from the colony, or to go to certain localities, and were for the purpose of enforcing the Company's regulations as to trade.

Much has been said about the establishment of the so-called "posts." Two of these posts, those at Mahaicony and at Demerara, were in the annexed district east of the Essequibo, and therefore have nothing to do with the present controversy. Another post was established for a short time in the interior, and another existed during a greater part of the Dutch period on the Pomeroon or in its immediate neighborhood, at Wakepo or Moruca. These posts were points where an Outlier or a Bylier was placed for purposes of trade and observation. They also served some purpose in connection with the apprehension of runaway slaves, which were regarded precisely, being only a form of property, as strayed animals would be regarded. The post at Pomeroon was of an exceptional character. It was not only a trading depot, but it became the Colony's custom-house, as it lay upon what they clearly regarded as the frontier. All the traffic with the Orinoco, which was extensive for those days, passed through it, and paid a duty there, in cases where duties were levied. The post in Cuyuni was of too short duration and too feebly administered to be an important feature of anything. As far as it went, however, it also was a mere trading station, and it had none of the features of a frontier custom-house which marked the post at Pomeroon.

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The relations of the Colony with the Indians will be more fully treated later. They were maintained primarily for purposes of trade, especially the slave trade, which became extensive after 1785. Incidentally, they were conducted, as every colony would conduct them, so as to ward off possible attack and as far as might be to promote the safety of the settlement. With that object the colonial authorities, as in all the other colonies of America, took many precautions to regulate the conduct of the colonists so that offense should not be given to the Indians and peaceful relations thereby disturbed. This fact, which has been used in the British case as the foundation for a claim that the Indians were protected from the settlers, was merely an ordinary and obvious precaution for the protection of the colony from the Indians. It is noticeable here as being an additional reason for maintaining a close and constant supervision of the colonists outside of the limits of the Colony.

As a rule, the trade prohibitions, like all other regulations, were issued in the form of general prohibitions and are so referred to in the Dutch correspondence, and from this fact it is contended that an inference may be drawn as to a general control over trade in the disputed territory. There is nothing to justify such an inference. The colonists were not specifically named in the prohibitions because there was no need of naming them. No one, whether of the Company at home, the Colonial Government and its employees, the colonists, the Spaniards, the Indians, or the other foreigners, ever supposed that they applied to anybody but the colonists. So with all the other general regulations and prohibitions of the Company, such as those relating to passports, the movements and other acts of individuals, and the like. When the Court of Policy issued an order that no one should stop in Barima, in consequence of the scandalous conduct of Van Rosen and his companions, it meant that no one of the colonists should stop in Barima. The trade monopoly of the West India Company, therefore, which is spoken of as an exclusive right of trade,

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was only exclusive of other Dutchmen. The exercise of this exclusive right was not territorial in any sense, but personal. It may be added that the charter by its very terms restricting the acts of Dutch subjects in all the territories of the new world, of whatever nation, contemplated this personal jurisdiction over Dutchmen on foreign soil.

It is a well recognized principle that the dominion of a State may extend over its subjects or citizens wherever they may be, and it was this personal jurisdiction or control that the Colonial authorities exercised over the colonists outside of the limits of the colony itself. The union in these authorities of two distinct functions, namely, the government of the colonists and the prosecution of trade in which the colonists were competitors, led to a more extensive application of the principle of personal control than is usually to be found in practice. The Company used its authority over the colonists to sustain its trade monopoly; and it is sometimes difficult to see where the trade functions and the governmental functions respectively begin and end. The point, however, is that the control was in no sense a territorial control except as exercised within the limits of the territory of the colony. Outside of these limits it operated only upon the persons of the colonists. No attempt was ever madeto exercise any supervision or control over anybody except colonists west of the falls of the Cuyuni, in the interior, and west of Moruca, on the coast

This distinction is clearly shown by the controversy which took place, between 1712 and 1718, between the free colonists and the Company with reference to the trading monopoly of the latter. In this the position of the Company was that its powers were in no way restricted by Dutch territorial limits. It contended that its trade monopoly extended to the control of its subjects in foreign territory, because such foreign territory was within the trade limits of the Company's charter, or, as it expressed it, "it is all the Company's territory, though within the power of the Spanish Crown."

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By this the Company meant to say simply that, as against other Dutchmen, it had a right to monopolize trade within the territory of Spain. This is fully shown by the correspondence.

Thus, Commandeur Van der Heyden, writing in 1713 (V. C., vol. ii, p. 75) to the Company, said:

In pursuance of your order, the prohibition concerning the trading-in of red slaves, annatto dye, and balsam copaiba, issued by me on 24 July of last year, shall provisionally be left standing, and be executed until I receive counter orders: although this causes great regret among the free, who have complained about this at various times, urging that they did not claim to trade within the territory of the Company, but asked only permission to do so on Spanish territory, such as Orinoco, Trinidad, etc.; which I refused them.

And in a report of the same year he added (V. C., vol. ii, p. 76):

Upon this subject I wrote at much length to the Chamber at the time; therefore, it cannot be denied that copaiba was ere this sent from here to the Fatherland, because this trade has been permitted to be free, as it took place outside of the Company's district and was only carried on upon Spanish territory in the river Orinoco, where the inhabitants of the colonies Berbice and Surinam trade likewise; however, since the prohibition, no copaiba oil has to my knowledge been sent, and it shall remain prohibited until I receive counter orders.

The Company replied on May 14, 1714 (V. C., vol. ii, p. 76):

"We leave it still most urgently recommended to you that you strictly maintain the prohibition of trade in red slaves, annatto dye, and balsam copaiba; for the Company desires as heretofore to keep that trade exclusively for itself, in order thereby in a measure to provide for the costs and heavy expense of keeping up that colony, and we can therefore give no heed to the complaints of the inhabitants.

"And, as for their protestations that they are not going to trade within the territory of the Company, that is absurd indeed; for, although Orinoco, Trinidad, etc., is [*sic*] under the power of the Spaniards, still it also lies within the charter of the Company, where nobody has the right to trade except the Company and those to whom the Company gives permission to do so; so that it all is the territory of the Company, even though we have no forts there. And it is an untruth that an enactment was ever published making that trade free; but the contrary is clearly enough to be seen in the resolution of the Board of Ten. This has there-

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fore crept in there only through neglect; for which reason you are instructed, as above stated, to see closely to it that the Company suffer no injury herein."

On May 24, 1717, the ably-written "Memorial of the Free Settlers of the Colony of Essequibo to the Directors of the West India Company" was drawn up, showing clearly the injury that the Company was doing by prohibiting their trade in Spanish territory. The Memorial said (V. C., vol. ii, pp. 77–78):

"It is now nearly five years since we have been prohibited by the Heer Commander Pieter van der Heijden, acting under the orders of Y. N. from trading, as well within as without this Colony in Red Indian slaves, balsam, &c.; through which prohibition we find ourselves deprived not only of the advantages the said business, however small, would have been able to bring to us, but further must see the profits, which were to be expected therefrom, accrue before our eyes to our neighbours, to wit, the colonists of Surinam and Berbice, and seeing that it has pleased Y. N. to make a prohibition of such a character to take effect, we trusted that it, through the serious recommendation of our aforesaid Heer Commandeur would have been suspended, so we take liberty, Y. N., simply and directly to show how little advantage it is for the Noble Company that the aforesaid prohibition continues to remain, how much prejudice we suffer therefrom, and how it favours the inhabitants of Surinam and Berbice, and also encourages them to push on the business more and more to their profit.

"Your Noblenesses are well aware that it is permitted to those of the said colonies to traffic in everything they can get, nothing else is left for us than the bartering for Indian vessels, canoes and corials, and occasionally some hammocks or cacao from the Spaniards in Orinoco; so that we are restricted in a river, which is outside of the territory of the Noble Company, where the same has no more power than a private merchant, which is in the Spanish possession, and where the commonest person of our neighbours is allowed to carry on trade in anything that he pleases, as well as the Noble Company, without exception from what place they come. Y. N. are also aware (or at least we suppose so) that Orinoco is a river which is accounted as the property of the King or Crown of Spain, and consequently that nation there master, and whenever a vessel from Essequibo (we represent the matter truthfully) be now come in Orinoco, whether it be for trading in vessels or otherwise, and likewise a canoe out of Surinam or Berbice find itself there, and that according to the fashion of the Indian traffic one of these Indians with some of his wares (whether it be slaves, balsam,

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or anything that for us is contraband, and nevertheless to those of our aforesaid neighbours is allowed), to come alongside of the Essequibo canoe (to which be it said without flattery they also sell more eagerly partly because they have better cargo, partly because they are able to come to an agreement with us more peaceably), then are our settlers obliged to answer the Indians that such merchandize cannot be traded in by them, thus sending them back to the Surinam canoe; in consequence against their will they are obliged to contribute to the profits of the same, or otherwise the French and English barques know well how to pass up. Yet further, whenever a canoe, be it of Surinam or Berbice, having set sail, has in the neighbourhood of this river or elsewhere met any free Indians who have red slaves for sale, they buy the same in, yes, bring the purchased slaves within the river, deliver them to one or another of our inhabitants, proceed on their voyage, traffic in the Rivers Marocco, Weijne, Barima, Pomeroon, Orinoco, Trinidad, and wherever it is convenient to them, aim at the greatest profit, and when they have got everything they can in repassing, take in again their slaves that they had left here, and push on their journey to Surinam, being well pleased that the Essequibo inhabitants were oppressed by those who ought to protect them and their gains (from which the Noble Company can make no profit) taken away and driven into the Surinam purse. That which relates to their business presents itself to us very painfully, seeing that the Indians get just as good payment in cargo, no matter with whom they deal, yet they of Essequibo are much the best supplied, and being the nearest situated have always before the prohibition been on the most friendly terms with them.

"We cannot so far comprehend what is the object of Y. N. in prohibiting the business to us, seeing that you cannot hinder those from Surinam and Berbice—yea, not even French, English, and other foreign nations—it appearing to us as if Y. N. wished to place the yoke on our neck alone, because, so long as Essequibo has been in European hands, there cannot be any instance shown that the inhabitants of this Colony alone were restricted so as not to be able to carry on this traffic, &c."

For the purposes of the present Argument, it makes no difference whether the Company were right or wrong in their theory. The point is that they clearly distinguished between territorial rights and the right of exclusive trade, and that they held the latter to extend, as against Dutch subjects, into what was admittedly the territory of a foreign State. No conclusion, there-

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fore, can be drawn as to territorial claims from any assertion of the West India Company to exclusive rights of trading.

Another result of the constitution of the Colonial Government as being in the hands of a trading company is to be noticed in its important bearing upon the evidence in the present case. Owing to the fact that the Company was engaged in commercial business, as well as in governing a colony, and that its representative on the spot was not only the Colonial Governor, but the business agent of the Company, his reports and correspondence describe the course of events with a minuteness and detail which would never be found in the archives of an ordinary Government colony. This correspondence is open to inspection, and has been examined and in large part offered in evidence by both parties. It is so full and detailed that it may almost be said to give the daily record of every event, even of minor importance, in the history of the colony; in some cases it is actually a daily record. It follows that where no mention is to be found in the Dutch archives of an alleged event of importance, it is well-nigh conclusive evidence that no such event took place. Especially as to questions of settlement and political control it may be safely assumed that, whatever other persons may have imagined, there was no such thing as Dutch settlement or Dutch control beyond that which the Dutch archives indicate. If, therefore, the Governor of Cumana or Guayana reports that a rumor, as was now and then the case, of some important act of the Dutch, by way of making settlements or exercising control, had reached his ears, it may safely be assumed that the rumor was without foundation unless it is confirmed by the Dutch archives. It is impossible to read these latter at any point without being struck by their minuteness of detail; and no event, the record of which is omitted in the archives, can be proved in the present proceeding by the mere rumor from another source of its occurrence.

The Spanish Colonial authorities, on the other hand, reported little to the Council of the Indies that can be called a record of

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current events, certainly nothing with reference to the course of trade. Substantially everything that we have on this subject, even as to the trade of the Spaniards themselves, comes from the Dutch archives. In 1750 the Spaniards were coming down the Cuyuni in such numbers to trade in Essequibo that a Committee was actually appointed to report a plan by which they could be induced to defer their traffic until they reached the lower Essequibo, where the Company's warehouse and principal plantations were situated. (B. C., App. II, p. 68.) The Spanish trade in hides, tobacco and live stock with Moruca by way of the Barima was likewise a very extensive traffic, carried on wholly, in the later periods, by Spaniards. But as to these two facts, proved conclusively by the Dutch records and of such vital importance in this controversy, not a word is to be found in the Spanish archives. The reports written by the Colonial Governors were always of a general character, in the nature of extended dissertations upon the general welfare of the colony, and it was only when some special occasion arose for it that they dealt with passing events at all. In the construction of these general reports the Governors dealt largely with subjects which they only knew from hearsay, especially in reference to any movements of the Dutch. Under these circumstances, no conclusion is to be drawn from a failure to refer to any given occurrence, for such occurrences, unless there was special occasion for doing it, were rarely or never reported.

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CHAPTER VIII.

THE DUTCH TITLE—CONQUEST.

The Dutch title, to such possessions as they had in Guiana in 1648, was acquired by war; is a title by conquest and was confirmed and perfected by the Treaty of Munster.

In the British Case (p. 21) it is said:

"In 1581 the Dutch had formally renounced the sovereignty of Spain, and the war then raging between the two countries continued till 1648, with an interval of partial truce from 1609 till 1621."

The Dutch then entered Guiana while they were in a state of war with Spain, a war for independence on the part of the Dutch, and, on the part of Spain, to reduce its rebellious subjects and to re-establish its sovereignty.

If the Dutch were the victors, all Spanish territory actually held by the Dutch at the close of the war became theirs by conquest—the title to be perfected by a treaty of peace.

If Spain was victorious, the attempt to introduce a new state would fail; there could be no treaty, for there would be but one sovereignty. Spain's old title and sovereignty would be re-established, and Essequibo would be a Spanish colony.

It may be said that to allege a Dutch title to Essequibo by conquest from Spain is to assume a prior Spanish title. We reply that the manner and circumstances of the Dutch occupancy and the cession taken from Spain were a recognition by the Dutch of Spain's prior right.

It is not necessary that Spain's title should have been a perfected title, or that the places seized by the Dutch should have been at the time in the actual occupation of Spain. It is enough that the Dutch entered in war to seize and appropriate Spain's title—whatever it was—by force, and at the close of the war took by treaty a release of that title. As against Spain, the Dutch limits must be

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determined by the rules applicable to a conquest, and by the terms of the treaty of peace. The Dutch entry in Guiana was an act of war, not the peaceful appropriation of lands believed to be unappropriated, and, by the treaty of peace, the Dutch asked and took a transfer to themselves of Spain's title to Essequibo, which they had seized in war and then held.

Spain's title was appropriated by conquest, and was extinguished only so far as the actual Dutch occupation extended. The Treaty of Peace runs in those terms, and implies that a title to the territory ceded was derived from Spain, and that beyond the cession the territory was Spain's. In other words, that prior claim or title in Spain, which is necessary to give the Dutch acquisition the character of a conquest, was conceded by the Dutch. They expressly set up a title to their New World possessions based upon conquest from Spain, in the New Netherland controversy, as we shall see. Spain claimed the Essequibo territory and defended that claim by arms. The Dutch, by arms, effected an appropriation of Spain's claims, and so were able to set up, as they did, the Spanish title against other claimants.

They cannot say they took nothing in Essequibo from Spain, either by conquest or cession. Spain parted with her title—deprived herself of the right to recover Essequibo—and the Dutch, while holding that title, cannot free themselves from the limitations that attach to it.

Until the treaty of peace was signed and Dutch independence recognized, Spain's right to take—if she could—every foot of territory possessed by the Dutch, must be conceded. In the Treaty of Munster the Dutch distinctly recognized the fact that Spain, as sovereign of revolted Portugal, had still a title to "the places in Brazil," though they were then as much in the effective control of Portugal as Essequibo was in the control of the Dutch. By that treaty they took an absolute assignment of Spain's title to Essequibo, and a conditional assignment to "the places in Brazil,"

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both at the time in the occupation of provinces of Spain that had revolted and declared their independence.

The war between Spain and the States General was waged with a bloody intenstity in the Low Countries, but it was not limited to that region. The Dutch carried it into the distant possessions of Spain; sent out their fleets to capture Spanish Colonies, to harry the coasts of Spain's distant possessions, to destroy her commerce and to seize her ships. This from Brodhead gives a comprehensive sketch of these military operations:

"The Company laid waste Bahia, which, independent of the incurred damages, cost the King of Spain over ten millions to recover it; and, also, captured, plundered, and destroyed Porto Rico, Margarita, Sancta Martha, St. Thomas, Guiana, and sundry other places;

Took and retained Pernambuco, and Tamarica, whereby the King of Spain hath lost over a million and a half of yearly revenue. . . .

Prevented the Portuguese, by the continual cruizing of our ships on the coast of Brazil, from bringing over their sugars and other produce. . . .

Also, captured his fleet from New Spain, and thrice made prize of the rich Honduras ships; took, moreover, in divers parts of Africa and America, over a hundred of his vessels, most of which had full freights, including several of his best galleons; and burnt and destroyed nearly as many, if not more, that had ran ashore." (Brodhead, Docs., vol. i, p. 63.)

Even the truce of 1609, as the British Case admits, was "partial" and not effective. The Dutch knew that Spain claimed Guiana; that she was engaged in settling it; that she was drawing from her American colonies the wealth that enabled her to continue the war; that some of her treasure-ships rendezvoused in the Orinoco, and that in the interior of that province there was believed to be a fabulous store of gold. Guiana was a vulnerable and exposed point. The Spanish garrisons were not strong, and a "*sedem belli*" there offered great opportunities to harass Spain and to divert from her treasury to the Dutch treasury a great store of the precious metals. It also offered an opportunity to cripple and appropriate the trade of Spain to the

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West Indies. It would seem, therefore, unduly to discredit the intelligence and strategy of the Dutch to assume that they did not carry the war thither. We should expect them to do so, and we find that they did.

In a minute made by the Estates of Zeeland, in November, 1599, we read:

"In the matter of the request of the Burgomaster of Middelburg, Adriaen ten Haeft, setting forth how that in the preceding year, 1598, at heavy cost to himself, he caused to be investigated on the continent of America many different rivers and islands,—and how that in this voyage were discovered various coasts and lands where one could do notable damage to the King of Spain" (V. C., vol. ii, p. 12).

Commenting upon this, Professor Burr, in his report to the American Commission (V. C.-C., vol. ii, p. 46), says:

"What it seems safe to infer is that this was the beginning of Zeeland's dealings with these unsettled coasts of the West—that the coasts in view were conceived of as belonging to the King of Spain, and that the enterprise was one of hostile aggression."

In a note Professor Burr says:

"It should perhaps be remembered that it was in this year, 1599, that there sailed forth from the Zeeland port of Flushing the Dutch armada under Pieter van der Does, which, after taking a town in the Canaries and avenging at the Isle de Principe that unsuccessful enterprise of Balthazer de Moucheron in 1598 which Berg van Dussen Muilkerk calls the 'earliest attempt at colonization from out the Netherlands,' sent seven or eight of its ships across the Atlantic to ravage the coast of Brazil. They returned, with great booty of sugar, in the following year" (V. C.-C., vol. ii, p. 46).

We have the report of a Dutch expedition to Guiana—probably the very first—in 1597-8, by Cabeliau, clerk of the expedition. The States General voted aid towards the arming of the expedition, and its destination was "Guiana, in the Kingdom of Peru" (V. C.-C., vol. ii, p. 43).

By the report of Cabeliau the States General were advised that the Spaniards were established at Santo Thome, and that there was then a Spanish Governor over all the coasts to the Amazon.

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He further says:

"To sum up briefly, there is up that river (Caroni) in the kingdom of Guiana certainly much gold, as we were told by the Indians from there as well as by our Indians here present, and the Spaniards themselves say so; but for our people busied with trade it is not feasible to expect any good therefrom, unless to that end considerable expeditions were equipped *to attack the Spaniards. This is the only means* of learning the whereabouts of any gold mines from the Indians; for whosoever are enemies, and bear enmity to the Spaniards, are friends with the Indians, and they hope steadily that they shall be delivered from the Spaniards by the Dutch and the English, as they told us" (U. S. Com. Rep., vol. ii, pp. 19–20; for a different translation *see* B. C., I, p. 21).

That is to say, we may get some trade to these coasts, but if we seek to enter the country—to appropriate its mines, &c.—we must fight the Spaniards.

There is an anonymous petition to the States General, given in the British Case (App. I, p. 22), to which the date of 1603 is ascribed (with an interrogation) in the table of contents.

This document was found by Professor Burr in the archives at The Hague and examined by him. He believes it to be the "work of Willem Usselinx, the well-known originator of the Dutch West India Company" (V. C.-C., vol. ii, p. 49). We quote from this document:

"* * * but the most important and principal thing that your Lordships have to observe is the suitable situation in case chance or your Lordships should in the future resolve (in imitation of the Romans) to divert this long war from these lands, and carry it thither. This *province* being the most suitable and best situated place in all America in which to establish an arsenal and a *sedem belli*, where the war could easily feed itself or be carried on and supported by all kinds of foreign nations" (B. C. App. I, p. 25).

To be sure, this writer, in the opening paragraph of his petition, speaks of the region as a country which "has now recently by some of the merchant-ships of this country been discovered situated in America and named the Province of Guiana" (B. C., I,

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p. 22); but the States General were too well-informed to bring forward a Dutch discovery.

The petition gives the bounds of the province on the west as including Trinidad and the Punta de Araya salt deposits (U. S. Com. Rep., vol. ii, p. 33). This might seem at first to imply mis-information, but in fact the occupation of the island of Trinidad by the Spanish was, as we have seen, a part of their occupation of Guiana. Berrio indicated it as a secure seat from which the occupation of Guiana might be prosecuted, and it was for a time under the Governor of Guiana.

This anonymous writer does not fail to take note of the danger to be feared from Spain and Portugal, if the Dutch should attempt settlements there. He relies, however, upon the difficulty of access to the harbors, for safety. It must be kept in mind that before the date ascribed to this paper the Spaniards were established at Santo Thome and in the Island of Trinidad. The interest, however, in this petition, is in the suggestion of a war policy, that of the Romans, namely, to carry the war into the enemy's country, and to "establish an arsenal and a *sedem belli*" there; and in the further suggestion that the States General organize an "Indian Chamber" to carry out the scheme. The date assigned to this petition is six years before the truce.

Van Meteren, a contemporary of Usselinx, writing in 1607, represents him as putting forward these views:

"For it was evident (he urged) that the Spaniard had still many foes in America, or the West Indies, who were strong and not easy to conquer, and who, with a little help, would be able to resist the Spaniards, especially if one should furnish them weapons and should teach them to use horses, and also to move and manipulate troops, so as to make the Spaniard show his back" (V. C–C. ii, p. 50).

Van Meteren also refers to a prospectus drawn up by Usselinx in 1604, in which he speaks of the Indians there as

"* * * good and friendly folk desiring the acquaintance and friendship of the Dutch people, whom they knew to be foes of the

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Spaniards, in order to be helped by them against the Spanish tyranny, etc., especially the *people of the interior*, these being not barbarians but tolerably civilized and organized, not going naked but clothed, and well disposed." (V. C–C., vol. ii, p. 51.).

This reference to a tribe of semi-civilized Indians, supposed to live in the interior of Guiana, and the reference, in the petition of 1603, to some valuable gold mines that had been discovered, suggests that Usselinx's scheme involved seizing the whole of Guiana when they had made the "Spaniard show his back."

The suggestion that the Indians should be used against the Spaniards was not allowed to wait the expiration of the truce. The British Case (App. I, p. 35 *et seq.*), with the purpose of showing the presence of the Dutch on the Guiana coast, prints an account from Spanish sources of the state of things about 1614 at Trinidad and on the mainland. Some of these statements, probably based on rumor, were unfounded, but so far as the account is taken to prove the presence of the Dutch, it shows a hostile presence—a state of war. The Dutch, allied with the Caribs, were threatening and attacking the Spaniards; and the latter, in return, were attacking the Dutch and seeking to drive them from the coasts. These quotations from the British Case (p. 22) confess a state of war on the Guiana coast:

"In that year (1613) the Spaniards surprised and destroyed one of their (Dutch) Settlements upon the River Corentin."

Again:

"In 1614 the Dutch invested the Island of Trinidad in conjunction with the Caribs. Reinforcements and ammunition were sent from Spain with a view to protecting that island, which was in imminent danger."

The Dutch were trying to possess by arms and hold by force, not only places where the Spaniards were not actually present, but the Spanish posts and forts.

The British Case (p. 23), after referring to the destruction of Santo Thome, in 1618, by Raleigh, says:

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"At this period the Spaniards were definitely excluded from the coast to the eastward of the Orinoco. This appears to have been frequented by them for trading purposes at the close of the sixteenth century; but after the advent of the English in 1595 and of the Dutch in (at the latest) 1598, and the succeeding years, it became more and more inaccessible to them. The English and Dutch allied themselves with the Carib Indians against the Spaniards; and after the sack of Santo Thomé by Raleigh in 1618 the Arawaks, till then the friends of the Spaniards, also turned against them."

This is a highly instructive statement. It concedes that the Spaniards, before 1618, "frequented" the coasts of Guiana "for trading purposes," which was, according to Great Britain's definition of effective occupation, to use the resources of the country. *The Dutch up to this time had no colony on that coast.* So far as *they* were there it was "for trading purposes" only. We learn, in the next place that at this period the Spaniards were definitely "*excluded*" by the arms of the Dutch and English, combined with the Caribs, and the coasts of Guiana made "more and more inaccessible to them."

We digress to remark that it must be a little awkward for Great Britain now to argue that Spain's failure to appropriate the resources of Guiana left these coasts open to a peaceful occupation, as upon an abandonment. The facts stated in the British Case are wholly inconsistent with the theory of a peaceful entry by the Dutch. Spain was "excluded," and by arms; and whether the territory was actually or only constructively a Spanish possession—the title acquired by the Dutch is a title by conquest, and can be no broader than the actual exclusion. A title accomplished by the destruction of Spanish posts and the forcible exclusion of Spaniards, is not a title by *occupatio*, and cannot claim for itself the benefit of the constructive extensions that apply to such a title. The entry of the Dutch at the Essequibo followed the exclusion of the Spaniards. Professor Burr, in his report to the American Commission on "The Dutch in Essequibo" (V. C-C., vol. ii, pp, 58-88), we think conclusively

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shows that the Dutch did not occupy Essequibo before 1625. The Spaniards had been there before them.

At the end of the truce, the suggestion of the anonymous petitioner of 1603 was put into effect by the organization of the Dutch West India Company. We are told by the British Case (p. 12) that:

"In 1621, upon the termination of the twelve years' truce between Spain and the Netherlands, a Company, called the West India Company, was formed under a Charter granted by the Dutch Government for the purpose of trade and colonization in the Indies. At this date there were already Dutch settlers in Essequibo. The Company at once established there an *organized* Colony, which was held and governed by Companies under successive Charters until the year 1791."

Berthold Fernow (Winsor, vol. iv, pp. 395-396) says of the Dutch:

"They had studied the weak points of that vast Spanish empire 'where the sun never set,' and found in the war with Spain a good excuse to make use of their knowledge, and to send their ships to the West Indies and the Spanish main to prey upon the commerce of their enemies. The first proposition to make such an expedition, submitted to the States-General in 1581 by an English sea-captain, Beets, and refused by them, was undoubtedly conceived in a purely commercial spirit. Gradually the idea of destroying the transatlantic resources of Spain, and thereby compelling her to submit to the Dutch conditions of peace and to the evacuation of Belgium, caused the formation of a West India Company, which, authorized to trade to and fight the Spaniards in American waters, appears in the light of a necessary political measure, without, however, throwing in the background the necessity of finding a shorter route to the East Indies."

He says that as early as 1606 a plan for the organization of a West India Company was drawn up, but that the project failed:

"A peace or truce with Spain was about to be negotiated, and Oldenbarnevelt, then Advocate of Holland and one of the most prominent and influential members of the peace party, foresaw that the organization of a West India company with the avowed purpose of obtaining most of its profits by preying on Spanish commerce in American waters would only prolong the war. . . . It was only when Oldenbarnevelt, accused of

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high treason, had been lodged in prison, and the renewal of the war with Spain had been commended to the public, that the scheme was taken up again, in 1618" (*Id.*, pp. 396–397).

The organization of the West India Company was not consistent with the truce, for it contemplated war upon Spain's colonies and commerce in the West Indies; and, while hostilities were actually allowed there, they could not be thus publicly and officially sanctioned.

About six months before the first charter of the West India Company was granted, Cornelis Janssen Vianen, in a memorial to the Prince of Orange, after referring to his own visits to Guiana, said:

"Sixthly, regarding the opinion sometimes advanced, that notable profits might be obtained through diverse products and fruits which might be found or raised on the mainland of America, between Brazil on the east and the river Orinoco on the west, in and about the river Amazon.

I answer, that several of our Netherlanders have as yet attained little by the aforesaid means, although up to now they engage there in peaceful trade; and if an attempt were made with superior force to gain the land there and by such cultivation introduce products of Brazil and the West Indies, the Spaniards would beyond doubt seek forcibly to prevent this, the more so as thereby their navigation to Brazil and the West Indies would be impeded" (V. C. vol. ii, p. 17).

We are further told in the British Case (p. 12) that, "between 1621 and 1648, during the Thirty Years' War, the Dutch commanded the whole of the coast of Guiana and as far as Trinidad."

Manifestly this means a military control, and of territory claimed by Spain. For no pretense has ever been made that, by a peaceful occupation, the Dutch ever had or claimed such bounds as are here ascribed.

But we are not left to inferences; for the British Case proceeds to inform us (p. 12), that "the Dutch were allied with the Indians against the Spaniards of Sanot Thomé and Trinidad. In 1629 and again in 1637 they sacked the settlement of Santo Thomé, and in

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the latter year they also raided the Island of Trinidad and burnt the Spanish settlements there."

And again (p. 25):

"In 1629 the English and Dutch, under the command of Adrian Jansz Pater, attacked and destroyed Santo Thomé, and afterwards fortified themselves in the branches and creeks of the River Orinoco."

This alleged occupation of the Amacura and Barima is put forward as the origin of the Dutch title to that region. But if any title was thus acquired it was clearly one by conquest.

We are further told (p. 13), that "during the whole of this period" the Dutch "were masters of the sea in the neighbourhood of the mouths of the Orinoco."

In the British Counter-Case (p. 131, par. 7) we are told:

"It is true that the earliest relations of the Dutch with Guiana and with the Essequibo related to trade and *hostile operations against the Spaniards*, but these relations immediately *developed into the taking of possession of parts of the country*."

This seems to us a full admission that the occupation of Essequibo was an act of war.

Winsor gives us this account of Dutch naval operations:

"The Dutchman Spilbergen was raiding here in 1614, and ten years later, and in the years following, the Dutch admirals, to distract the attention of Spain while the patriots of Holland were struggling for their independence, hovered here and on the Gulf coast with their fleets; damaging towns, intercepting Spanish ships, and sometimes making a great capture, as when Admiral Heyn captured the silver fleet near Matanzas, Cuba, in 1628." (Narrative and critical history, vol. viii, p. 198.)

Especial provision was made in the regulations adopted by the West India Company for Colonies, in 1628, for the capture of prizes.

The attack upon Santo Thome by the combined Dutch and British forces in 1629, and the alleged attempts of the Dutch to fortify themselves in the creeks of the Orinoco, show that the Dutch

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projet in Guiana was not a peaceful occupation of unappropriated lands, but an attempt to dispossess an enemy.

If the Dutch forces, after the destruction of Santo Thome, in July, tarried for a short time near the mouth of the Orinoco, it was manifestly to prepare for the attack on Trinidad, which followed in October. It was a temporary military occupation, and no right can be predicated upon it after it was let go. Yet Great Britain attempts to use it to support a title by *occupatio*.

In "Documents relative to the Colonial History of New York," edited by Brodhead (vol. i, p. 39), we have a report made by "the nineteen" to the States General, in 1629, in which it is declared that, as they had before represented, to make a truce with the enemy (Spain) would probably ruin the Company. In the course of an account of what had been done in the region of Guiana, it is said:

"From the commencement of our administration we preferred to proceed in a warlike manner against the common enemy," "because we found that the expected service for the welfare of our Fatherland and the destruction of our hereditary enemy could not be accomplished by the trifling trade with the Indians or the tardy cultivation of uninhabited regions, but in reality by acts of hostility against the ships and property of the King of Spain and his subjects, surprising his possessions and preserving them for the public service, which plan has been so graciously blessed by God during these latter years that great wealth has thereby been brought to this State, and the enemy's finances thrown into such arrears and confusion that no improvement is to be expected therein except from cessation of our arms and retaining our fleets at home, out of those countries." "We, therefore, confidently, and of our own certain knowledge, do assert that the entering into a truce must be the ruin of this Company."

Among the sources of wealth, they mention that "the silver coined and in bars received at the beginning of this year, in consequence of the capture of the fleet from New Spain, amounted to so great a treasure that never did any fleet bring such a prize to this or any other country."

In the sailing regulations, of the States General for the West India Company, May 14, 1632, and July 17, 1633, given in the

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British Case (App. I, p. 73), and in the Case of Venezuela (vol. ii, pp. 19-20), we have this:

"Firstly, no such ships (*i. e.*, from any part of the United Provinces, other than the Company's) may sail to the coast of Africa, or the New Netherlands, or elsewhere where the Company may trade, on any pretence: but they may sail to the coast of Brazil; likewise into the West Indies, to wit, [from] the River Orinoco westwards along the coast of Cartagena, Portobello, Honduras, Campeche, the Gulf of Mexico, and the coast of Florida, together with all the islands situated within these limits, in order there to carry on all manner of warfare by sea and by land against the King of Spain, his subjects and allies."

The next article made provision for payment to the Company of certain proportions of the proceeds from the sales of prizes taken from the enemy. The Company would conduct the "Warfare by sea and land" to the east of Orinoco for its sole profit, but would open the region to the west to all privateers, for a share in the war booty.

The letter of Jacques Ousiel to the West India Company, in 1637 (B. C. App. I, p. 82) gives an account of a projected Spanish and Indian expedition to besiege the Dutch fort at Essequibo.

But the Dutch military operations against Spain in South America, and the seizure of her territory, were not limited to the Guiana coasts. They were especially aggressive in Brazil, and were there also directed against places actually occupied by the Portuguese—then under the Spanish crown.

In 1623 the Dutch attacked San Salvador or Bahia and took it; and two years later yielded it again to Spain after a fight in which the Dutch fleet was destroyed. The war there against Spain continued until after the Portuguese revolt from Spain, and afterwards against the Portuguese.

When the treaty of Munster was made the Dutch still held some of the captured places in Brazil, and had lost some of them. To these conquered places, held and lost, the Dutch took Spain's cession—just as to the places in Guiana still held by them.

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All this may seem to be work of supererogation, but at least it completes the demonstration of the fact that the Dutch attempts to appropriate Guiana were not acts of peaceful occupation, but were acts of war, directed against and intended to weaken an enemy; that the lands appropriated were the prizes of war quite as certainly as the ships taken at sea.

But we are not left to argument to establish our proposition that the Dutch settlements in Guiana were conquests, and that the Treaty of Munster was a grant or cession by Spain confirming the Dutch title to these conquests.

We have a definite and nearly contemporaneous admission of these facts by the Dutch. In the sailing permits of the West India Company—of which one of the year 1653 is given in the British Counter-Case (App., p. 25)—the Dutch possessions in Essequibo are explicitly declared to be "conquests." The language is "except in our *conquests* of Africa, the Wild Coast, Essequibo, Berbice," &c.

In November, 1660, only twelve years after the treaty of Munster, in a "Deductie as to New Netherland, submitted by the West India Company, to the States General" we find this:

"King Charles I (of England), of illustrious memory, being likewise of too just and too generous a nature to give away and present to his subjects lands and places already possessed and governed by other free nations, his allies, and over which, consequently, no disposition in the world appertained to him.

Unless such should be claimed on the ground that the English nation have settled [*hun neergeslagen*] about that region of America (namely, in Virginia), prior to and before the Netherlanders.

If that be given weight, then we think the Dutch nation must instead be preferred, being considered the same as in earlier times, namely, vassals and subjects of the King of Spain, first discoverer and founder of this new American world, who since, at the conclusion of the peace, has made over to the United Netherland Provinces all his right and title to such countries and domains as by them in course of time *had been conquered* in Europe, America, etc. (*als bÿ haer ingevolge van tÿt in Europa, America, etc., waren gecconquesteert*)." (V. C., vol. iii, p. 367.)

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Spain's title by discovery is here distinctly admitted, and quite as distinctly the fact that, "at the conclusion of the peace," by the Treaty of Munster, Spain made over to the United Netherland Provinces all her "right and title to such countries and domains as by them in the course of time *had been conquered* in Europe, America, etc."

The Treaty of Munster was a grant by Spain to the Dutch, and the grant was of territory taken in war.

But we have further evidence, from British sources, that the Dutch territorial claims in Guiana, now represented by Great Britain, were based upon conquest from Spain, confirmed by the cession contained in the Treaty of Munster.

In his letter to Senor Rojas, of January 10, 1880 (B. C. App. VII, p. 96), Lord Salisbury, speaking of the boundary dispute, says:

"With regard to the first of these questions, I have the honour to state that Her Majesty's Government are of opinion that to argue the matter on the ground of strict right would involve so many intricate questions connected with the original discovery and settlement of the country, and subsequent conquests, cessions, and Treaties, that it would be very inlikely to lead to a satisfactory solution of the question. . . . The boundary which Her Majesty's Government claim, in virtue of ancient Treaties with the aboriginal tribes and of subsequent cessions from Holland, commences, etc."

Now, here we have a distinct statement that the British title rests in part, at least, upon conquest and cession, and those terms could only be appropriately used of Dutch conquests from Spain and of Spain's cession to the Dutch; for Great Britain does not allege a conquest from Spain or any direct cession from her. As to the reference to "treaties with the aboriginal tribes," it is enough to say that the reference is to treaties that preceded the British acquisitions and that no such treaties have been exhibited —even if sovereignty could have been acquired by that means. All of these references to sources of title must relate to a Dutch title; for Great Britain does not claim to have acquired any direct title as against Spain, either by conquest or cession. If she has

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any title referable to such sources it is derived from the Dutch. In his letter of November 26, 1895, to Sir Julian Pauncefote (V. C.-C., vol. iii, p. 275) Lord Salisbury says (p. 276) the British claim is "in accordance with the limits claimed and actually held by the Dutch, and this has always since remained the frontier claimed by Great Britain."

It is elsewhere affirmed by Lord Salisbury that Schomburgk did not "discover or invent any new boundaries," but only laid down the line of Dutch appropriation.

And again, on May 26, 1893, Venezuela, through Tomas Michelena, submitted bases for the conclusion of a Preliminary Convention between Great Britain and Venezula for re-establishing diplomatic relations and the settlement of the questions pending. Article 1 contains this recital:

"The Government of Great Britain claims certain territory in Guiana as successor in title of the Netherlands, and the Government of Venezuela claims the same territory as being the heir of Spain" (V. C., vol. iii., pp. 286–287).

In his reply, July 3, 1893, Lord Rosebery amends this statement to read as follows:

"(Whereas) The Government of Great Britain claims certain territory in Guayana as successor in title of the Netherlands and [by right of conquest as against Spain, and whereas] the Government of Venezuela, etc., (V. C. vol. iii, p. 289).

The British Premier inserts the words, "and by right of conquest as against Spain." Now, it is not claimed that Great Britain ever took any part of Guiana from Spain by conquest. We have no hint of such a claim in the whole British Case. The title by conquest here asserted must then have been based upon a conquest by the Dutch, and this conquest must have antedated the Treaty of Munster; for there neither is, nor can be, any claim made of a later conquest "as against Spain."

We have then the distinct admissions of the Dutch and of Great Britain that the territorial titles, which were confirmed to the Dutch by the Treaty of Munster, were acquisitions by conquest.

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Let us now inquire what the law is as to the limits of a title by conquest.

The sources of territorial title are thus stated by Phillimore:

"From Grotius we learn that these modes of acquisition were:

1. By occupation (*occupatione derelicti*).

2. By treaty and convention (*pactionibus*).

3. By conquest (*victoriæ jure*). And if acquisition by accession and by prescription be considered as corollaries to occupation, and all cases of transfer be held to fall under the category of treaty and convention, the enumeration may be considered as sufficient and complete" (Phillimore, 3d Ed., i., 328).

Mr. Wheaton (Int. Law, 3d Ed., Sections 545-6) says:

"The treaty of peace leaves everything in the state in which it found it, unless there be some express stipulation to the contrary. The existing state of possession is maintained, except so far as altered by the terms of the treaty. If nothing be said about the conquered country or places, they remain with the conqueror, and his title cannot afterwards be called in question. During the continuance of the war, the conqueror in possession has only a usufructuary right, and the latent title of the former sovereign continues, until the treaty of peace, by its silent operation, or express provisions, extinguishes his title forever.

The restoration of the conquered territory to its original sovereign, by the treaty of peace, carries with it the restoration of all persons and things which have been temporarily under the enemy's dominion, to their original state. This general rule is applied, without exception, to real property or immovables. The title acquired in war to this species of property, until confirmed by a treaty of peace, confers a mere temporary right of possession. The proprietary right cannot be transferred by the conqueror to a third party, so as to entitle him to claim against the former owner, on the restoration of the territory to the original sovereign. If, on the other hand, the conquered territory is ceded by the treaty of peace to the conqueror, such an intermediate transfer is thereby confirmed, and the title of the purchaser becomes valid and complete."

In a note (346c), Mr. Boyd, the editor of the edition of Wheaton to which we refer, says:

"Firm military occupation transfers all the rights of the displaced sovereignty to the victor, and he may therefore use the public property of the former as he thinks fit, and may appropriate to himself the rates and taxes

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due to it. But this is the case only so long as the occupation lasts; as soon as the district is lost, the rights of military occupation over it are also lost. If the district is retaken by its original sovereign, it reverts to the same state it was in before it was lost."

Grotius (Peace and War, iii, par. 4, 219), says:

"Lands are not understood to become a lawful possession and absolute conquest from the moment they are invaded. For although it is true, that an army takes immediate and violent possession of the country which it has invaded, yet that can only be considered as a temporary possession, unaccompanied with any of the rights and consequences alluded to in this work, till it has been ratified and secured by some durable means, by cession or treaty. For this reason, the land without the gates of Rome, where Hannibal encamped, was so far from being judged entirely lost, that it was sold for the same price that it would have been sold for before that period. Now land will be considered as completely conquered, when it is enclosed or secured by permanent fortifications, so that no other state or sovereign can have free access to it, without first making themselves masters of those fortifications."

This author (*Id.*, par. 5, 221), further says:

"The right of making things change their owners by force is of too odious a nature to admit of any extension."

And (*Id.*, p. 353), speaking of treaties of peace that leave things in the "state to which the war has reduced them," he further says:

"And lands are said to be so possessed, when inclosed or defended by fortifications, for a temporary occupation by an encampment is not regarded in this case. Hence Demosthenes in his speech for Ctesiphon, says that Philip was anxious to make himself master of all the places he could seize, as he knew that upon the conclusion of a peace, he should retain them."

The military occupation must have the character of a firm holding and of a permanent, not a transitory, occupation.

Field (Int. Code, p. 482), proposes this rule:

"Military or belligerent occupation, as used in this book, is a possession by the military power of a belligerent *sufficiently firm to enable such belligerent* to execute its will within the limits of the occupation, either by force

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or by acquiescence of the people for an indefinite future, subject only to the chances of war."

He further proposes that:

"The allegiance of the members of a belligerent nation resident within the limits of the military occupation of the enemy is suspended."

This suggestion furnishes a good test of the limits of a military occupation. The subjects of the power from whose control the territory has been taken may, during and within the occupation, recognize the military control of the enemy, and may submit themselves to and even take part in the local administration, without treason to their sovereign.

Could a Spaniard in the Pomeroon, or in the Barima region, or above the first falls of Cuyuni, have taken office under the Dutch, without treason to his King, in 1648?

Phillimore (vol. iii., p. 814), says of title by conquest:

"Conquest and occupation are distinct things, governed as to their legal effects in various respects by different principles and attended with different consequences. Nevertheless there is an analogy between the two, and, in some respects, rules of occupation are applicable to the case of conquest. Conquest is often defined as *occupatio bellica;* and it so far partakes of the nature of occupation that unless the conqueror has actual possession of the things conquered he can exercise no right over it. . . . It has been already seen that, in the case of immovable property, even actual possession by the conqueror does not confer a right of alienation, which, after the conqueror has departed, will inure to oust the original owner, unless such a result has formed part of the stipulations of a treaty or been ratified by some public act of the state."

Eugene Ortolan, in a treatise entitled "On the means of acquiring international dominion or state ownership between nations, according to the public law of nations, compared with the means of acquiring ownership between private persons according to private law, and followed by the principles of political equilibrium," says:

"But leaving aside this usual exception, which at the end of a very short time and before any Treaty gave recognition to the right of property, to booty or maritime spoils, we must be certain of the fact acknowledged

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by the laws of nations ruling to-day in Europe, that war is a method of procedure where there is no definite sentence valid as in law in reference to property, except by virtue of a Treaty ending the war, and from the moment that this has been agreed to."

Military occupation, he further says,

"constitutes a valid possession; the victor may perform in the territory by him occupied the acts of a *bona fide* possessor; may collect taxes, exercise authority, jurisdiction. The foreign nations, if they wish to remain neutral, are under obligation to recognize such possessions, and the belligerent nation itself, upon recovery of the territory, could not derogate such acts that imply not only definitive property but also a passing possession."

"*The* victor, *however, can not validly perform any of the acts which indicate a right to international domain; can not sell the property, mortgage the country, alienate the territory to a foreign nation, dispose of it in any manner whatever. The power of the victor is transient as the probabilities of the success to which it is due, and this power expires at the same time of the possession and nothing of it remains thereafter.*"

In the case of American Insurance Company *v.* Canter (i. Peters, U. S. Sup. Crt., 511) Marshall, *C. J.*, says:

"The usage of the world is, if a nation be not entirely subdued, to consider the holding of the conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession or on such terms as its new master shall impose."

In the case of U. S. *v.* Hayward (2 Gallison, U. S. Cir. Crt., 485), a case growing out of the military occupation of the Town of Castine, in the State of Maine, by the British forces during the war of 1812, Story, Justice, says:

"By the conquest and occupation of Castine that territory passed under the allegiance and sovereignty of the enemy. The sovereignty of the United States over the territory was of course suspended and the laws of the United States could no longer be rightfully enforced, or be obligatory upon the inhabitants who remained and submitted to the conquerors. Castine therefore could not strictly speaking be deemed a post of the United States, for its sovereignty no longer extended over the place. Nor on the other hand, could it strictly speaking be deemed a post

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within the dominions of Great Britian, for it has not permanently passed under her sovereignty. The right which existed was the mere right of superior force; the allegiance was temporary and the possession not that firm possession which gives to the conqueror *plenum dominium et utile*—the complete and perfect ownership of property. It could only be by a renunciation, in a treaty of peace, or by possession so long and permanent as should afford conclusive proof that the territory was altogether abandoned by its sovereign, or had been irretrievably subdued, that it could be considered as incorporated into the dominions of the British sovereign."

Castine was at the mouth of the Penobscot River, and the Governor of Nova Scotia, by proclamation, claimed for Great Britain, by conquest, all of the territory east of that river; but the claim was absurd. If General Pakenham had captured New Orleans, Great Britain would hardly have put forward a title by conquest to the whole Mississippi Valley, even if her view of the watershed doctrine had been then what it is now.

The case of United States *v.* Rice (4 Wheaton, 246), also grew out of the military occupation of Castine by the British; the question being whether an importation of goods made into the port, while the British had control, could, after the treaty of peace and the restoration of the port to the United States, be made subject to duties. The Court (Story, *J.*) said:

"Under these circumstances, we are of opinion that the claim for duties cannot be sustained. By the conquest and military occupation of Castine, the enemy acquired that firm possession which enabled him to exercise the fullest rights of sovereignty over that place. The sovereignty of the United States over the territory was, of course, suspended, and the laws of the United States could no longer be rightfully enforced there, or be obligatory upon the inhabitants who remained and submitted to the conquerors. By the surrender the inhabitants passed under a temporary allegiance to the British Government, and were bound by such laws, and such only, as it chose to recognize and impose."

Chief Justice Taney said, in Fleming *v.* Page (9 How., 615):

"For by the laws and usages of nations, conquest is a valid title while the victor maintains the exclusive possession of the conquered territory."

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The convenience of an intruder is not to be consulted. A conquest is an actual taking and nothing goes with it. One who, by conquest, takes a river mouth or a line of sea coast, cannot invoke the rule as to the watershed, or as to the middle distance, or the rule of safety, against the dispossessed nation. So a treaty of peace confirming to the conqueror what he has taken—the places then held by him—is not to be taken to give those natural and convenient boundaries that a discoverer, or a first occupier, might have claimed. It gives only those limits that the conquered nation must fight to repossess itself of—*at the time of the treaty.* It is not significant that the conqueror may have sent expeditions into further regions or have had very temporary posts there. It is only that which he has securely possessed himself of that he has title to. Now it is quite certain that the region from which the Dutch had, by armed occupation, excluded Spain, comprised only the very lowest parts of the Essequibo River, within the disputed territory. They had attacked Santo Thome, but withdrew, and there was no part of Guiana, save the lower Essequibo, where the Spanish could not and did not go as they pleased. It was not the stress of war in Guiana, nor Dutch victories or power there, but at home, that brought the peace and the cession.

We conclude this discussion with these propositions:

FIRST.—The Dutch occupation of Guiana was effected as an act of war against Spain upon territory known to be claimed by Spain, and with a view to the appropriation of the Spanish title and the use of the places seized as depots and arsenals in further contemplated attacks upon Spain's ships and settlements.

SECOND.—That as matter of law, the Dutch could by these hostile acts acquire no more territory than was actually and firmly held by them. That the bounds of their military occupation cannot be extended by the use of any of the equitable intendments allowed in behalf of nations that discover and peaceably occupy unappropriated lands.

THIRD.—That the Treaty of Munster is to be read as confirming the Dutch title only to such territory as was thus strictly held.

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CHAPTER IX.

THE DUTCH TITLE—TREATY OF MUNSTER A CESSION.

If the Dutch holdings in Guiana, in 1648—and especially Essequibo—were the fruits of conquest from Spain, a purely peace treaty would, *ex re termini*, have the effect of confirming the Dutch title to such places as they then firmly held. The treaty might, by express stipulation, have confirmed this legal consequence of the agreement to terminate the state of war, or it might, by cession, have enlarged the holdings of the Dutch, or have reduced those holdings or required a complete surrender of them to Spain. What the treaty did was, as the British Case admits, to "confirm" the Dutch in their "possessions," to give them that "perfected" title of which the law writers speak. To be sure, Great Britain contends that there is in the treaty a provision for a contingent enlargement of the Dutch possessions; but this, as we shall show, had no operation westward of Essequibo. We think that the treaty is to be read as a cession of territory acquired by conquest, and limited by the rules applicable to conquests. That reading is confirmed, as we have seen, by the unequivocal admissions of the Dutch and of Great Britain. But if the Dutch did not hold by conquest, but by a disputed *occupatio*—disputed by arms—this comprehensive treaty of peace must be so read as to settle that dispute; to leave it open would be to make no peace. And after all, Great Britain's contention of a Dutch right to enlarge the possessions of 1648 is rested *upon the treaty*, which is said to contain a provision *authorizing* it. Unless then that provision does have that effect as to the territory in dispute, the Dutch were limited by the treaty to so much of the disputed territory as they had actually occupied. There was no possible basis for a larger Dutch claim.

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We maintain that by the Treaty of Munster, Spain ceded and the Dutch accepted as a grant from Spain, those parts of Guiana then occupied by the Dutch; that the treaty plainly implied that the bounds of the territory ceded and of the territory retained by Spain were co terminous, and that by the treaty the Dutch expressly engaged not to attempt any enlargement of the ceded territory, except as they were specifically allowed so to do by the treaty; that these exceptions related wholly to lands and not to any part of the disputed territory; and that any occupation of territory west of the proper bounds of the Dutch possessions occupied by Portugal, in Essequibo—as they were in 1648—was in violation of the treaty and an encroachment upon Spanish territory.

In the memorandum of the British Foreign Office, July 24, 1890, we have a most formal and definite admission that the Treaty of Munster was a grant. We quote :

"That territory, and by far the greater portion of the large tract of country which the Venezuelan Government seeks to put in question, accrued to the Netherlands under the Treaty of Munster of 1648 by right of previous occupation." (V. C., vol. iii, p. 283.)

The British positions, as disclosed by the British Case and by the Counter-Case, are these:

By the Treaty of Munster the Dutch were "confirmed in the possession of all the lordships, fortresses, commerce, and country which they then held, as well as the places which they should thereafter acquire without infraction of the Treaty" (B. C., p. 13).

In the British Counter-Case (p. 35) it is said that the Treaty of Munster "cannot possibly be regarded as a 'grant' by Spain to the Dutch of their Settlements, and that there was nothing in that Treaty to limit the expansion of the Dutch Settlements, provided they did not encroach upon territory actually held and possessed by Spain."

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And, again, of the clause of Article V. of the treaty—

"including also the localities and places which the same Lords States shall hereafter without infraction of the present Treaty come to conquer and possess;"

this is said (B. C–C., pp. 41–42):

"Now, bearing in mind that the only three European Powers in Guiana, the country immediately in question, were Spain, the Dutch, and Portugal, it is obvious that these words were intended to refer to the unconquered and unoccupied territories then in possession of native tribes."

It is not easy to reconcile these propositions. The Counter-Case seems to counter on the Case. It is said in the Case, that the treaty "confirmed" the Dutch title; that is, made it a firm title; which certainly implies a betterment of it, and that derived from Spain. Yet the Counter-Case says it was not a "grant." If no Spanish claim or title was released or passed by the treaty, how could it operate to make the Dutch title better? And, if such a claim or title was given or released to the Dutch it was a "grant." After, and by the treaty, the Dutch were in a position to set up, as grantees, a Spanish title; and this they did, in the dispute with Great Britain over the New Netherlands, as we have seen. The language then used was the "King of Spain . . . has *made over* to the United Netherlands all his *right and title* to such countries, &c." The Dutch accepted the Treaty of Munster as a Spanish "grant."

The British Case (p. 13) admits that, after the conclusion of the Treaty of Munster, "great extensions of their possessions in Guiana were made by the Dutch"—meaning, of course, within the disputed territory.

It contains this further statement in explanation of the Dutch attempts to extend on the west:

"In 1656 the Dutch were driven from Brazil by the Portuguese, and this seems to have had the effect of concentrating their efforts upon Guiana" (B. C., p. 27).

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That is, the extensions contemplated and allowed by the treaty, in the *east*, having been balked by reason of the superior power of the Portuguese, the Dutch turned to the prohibited *west* for enlargement.

A discussion of these propositions brings us to a particular consideration of the Treaty of Munster, and our first remark is that it was a treaty of peace. It terminated a long war. During the progress of the war, and as acts of war, the Dutch—revolting provinces of Spain—had seized Spanish towns, fortresses, and provinces; had battled with Spanish fleets, seized Spanish merchant and treasure ships, and had attacked Spanish posts and settlements, not only in Europe but in the East and West India Islands, and on the coast of America. The close of the war found the Dutch in firm possession of some of these places.

Under the next preceding head we have discussed the rules of international law applicable to the situation. As we have seen, the title acquired in war by the Dutch, until confirmed by a treaty of peace, was a mere temporary right of possession, a title that could not be transferred by the victor to a third party. A cession, by which the claim of the original sovereign was transferred, was essential to "confirm" the Dutch title, to give them a dominion that they could transfer to another.

Wheaton (Int. Law, Sec. 545) says:

"The treaty of peace leaves everything in the state in which it found it, unless there be some express stipulation to the contrary. The existing state of possession is maintained except so far as altered by the terms of the treaty."

It appears, then, that even if the treaty of peace between Spain and the Dutch had not contained a distinct cession, the effect would have been to confirm the Dutch in the places actually held by them; the places from which they had excluded the Spaniards, and which the latter could not repossess themselves of without a conflict. Regions into which the conqueror may have sent expeditions or in which he may have established temporary

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posts would not be included, nor would any of those beneficial implications which are allowed to some other titles be applicable here. The title is bottomed upon force, and is strictly limited.

Having now found the position in which things were when the plenipotentiaries of Spain and the Netherlands met to frame a treaty of peace, we turn to the treaty itself, to see whether it does not proceed along the lines of the rules of law we have indicated. But, before looking at its particular terms, let us consider some of the rules applicable to the interpretation of treaties.

In the British Counter-Case (p. 39), it is said:

"In considering these Articles, it must be borne in mind, as will be subsequently shown, that the Dutch were at the time in a position to make their own terms, and that the Spaniards were most anxious to agree to a Treaty at any price, and had in fact given instructions to their Plenipotentaries to that effect."

And again (*id.*, p. 46), it is said:

"It is unnecessary to adduce detailed argument to show that at the time she was negotiating the Treaty of Munster, Spain was practically at the mercy of the Dutch, and that the Dutch, many of whom would have much preferred that the war should continue, could and did dictate their own terms."

And again (*id.*, p. 48):

"Further, an examination of the negotiations prior to the Treaty, shows that the actual terms of Articles V and VI were dictated by the Dutch."

The legal rule applicable to a treaty made under such conditions is that it is to be construed most strongly against the party who was in a position to dictate its terms.

Vattel says (p. 443):

"In case of doubt the interpretation goes against him who prescribes the terms of the treaty."

The victor is always more or less firmly master of the situation, and therefore this author (p. 265) says:

"Everything that contains a penalty is odious."

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And again (p. 268):

"Thus the cession of a right or of a province made to a conqueror in order to obtain peace is interpreted in its most confined sense. If it be true that the boundaries of Acadia have always been uncertain and that the French were the lawful possessors of it, that nation will be justified in maintaining that their cession of Acadia to the English by the Treaty of Utrecht did not extend beyond the narrowest limits of that province."

Among the rules submitted by Great Britain to the Arbitrator—The Emperor of Germany—in the dispute with the United States as to the Northwest boundary, were these:

"2. In interpreting any expressions in a treaty, regard must be had to the context and spirit of the whole treaty."

"4. The interpretation should be suitable to the *reason* of the treaty."

"5. Treaties are to be interpreted in a favourable, rather than an odious sense."

"6. Whatever interpretation tends to change the existing state of things at the time the treaty was made is to be ranked in the class of odious things" (Wheaton, Int. Law, Sec. 287a).

We stop here to say, that to so construe a treaty of peace as to allow acts of hostility, or to leave unadjusted claims that would inevitably lead to further conflicts, would be contrary to the spirit of the treaty and "odious." It would be to put Spain in the position of confirming to the Dutch the territory they had taken, while leaving them at liberty—by an express stipulation in a treaty of peace—to seize as much more as they could. This would not be "suitable to the reason of the treaty."

Again Vattel says (p. 246):

"In the interpretation of a treaty or of any other deed whatsoever the question is to discover what the contracting parties have agreed upon."

He further says (p. 252), that an interpretation that would defeat the main purpose of the contract must be rejected; and so, one that leads to an absurdity. And, again (p. 253), that an interpretation "which would render a treaty null and inefficient cannot be admitted."

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Phillimore (vol. ii, p. 112) very pertinently says:

"As a general maxim it is true that good faith clings to the spirit, and fraud to the letter of the convention."

In Maryatt *v.* Wilson (i. Bos. & Pul., 439) Eyre, *C. J.*, said:

"We are to construe this treaty as we would construe any other instrument, public or private. We are to collect from the nature of the subject, from the words and from the context, the true intent and meaning of the contracting parties, whether they are A and B, or happen to be two independent states. The judges who administer the municipal laws of one of those states would commit themselves upon very disadvantageous ground, ground which they can have no opportunity of examining, if they were to suffer collateral considerations to mix in their judgment in a case circumstanced as the present one is."

In the case of United States *v.* Arodondo (6 Peters, U. S. Sup. Ct., 740), involving the construction of the treaty between Spain and the United States, a treaty that was expressed both in Spanish and in English, it is said:

"It became, then, of importance to ascertain what was granted by what was excepted. The King of Spain was the grantor, the treaty was his deed, the exception was made by him, and its nature and effect depended upon his intention, expressed by his words, in reference to the thing granted and the thing reserved and excepted in and by the grant. The Spanish version was in his words and expressed his intention, and though the American version showed the intention of this government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted, and what reserved; the rules of law are too clear to be mistaken and too imperative to be disregarded by this court. We must be governed by the clearly expressed and manifest intention of the grantor, and not the grantee in private, *a fortiori* in public grants."

We come now to a consideration of the Treaty itself, with these points established:

1. The Spanish King was the sovereign of the Netherlands.

2. Those states revolted, made war against Spain, seized her fortresses, cities, and provinces in the Low Countries, and her other possessions wherever they were able.

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3. In 1648, the Netherlands having demonstrated their ability to maintain their independence and to retain the places they had seized, Spain yielded and concluded a peace, recognizing the independence of the States General, and renouncing her sovereignty over the places held by the Dutch.

4. The Dutch asserted no claim whatever, had no pretense of a claim to any Spanish territory save that which they had possessed themselves of in the war; but, on the other hand, Spain's claim to the sovereignty of all the territory seized by the Dutch during the war, and possessed by them at its conclusion, was not lost in law.

The preamble of the Treaty declares that the object sought by it was "a good and sincere pacification on both sides and the sweet fruits of an entire and firm repose and quiet." (V. C., vol. 3, p. 5).

Article II declares that the peace "shall be good, firm, faithful and inviolable;" that all acts of hostility of every kind shall cease, by land and sea, in all their lands and dominions, for all persons and places.

It must be assumed, therefore, unless some matter of dispute—some claim by one party against the other—is by the treaty itself distinctly excepted, that all such matters were concluded by the treaty.

If, therefore, it was known to the Dutch at the time of the signing of the Treaty that Spain claimed the whole of the disputed territory, and that she would regard any attempt by the Dutch to extend the bounds of their possessions there as an encroachment upon her rights, it must be assumed that it was the purpose of both parties to settle that controversy.

In this connection it is not important to determine whether Spain's claim was strictly well founded in law. It is enough that she strenuously and in good faith claimed the territory; that an invasion of it would be regarded and treated by her as a hostile act. If this was known to the Dutch when the Treaty was

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signed, then the stipulation that they were not to extend their bounds in derogation of the Treaty must be construed to be an engagement not to invade or appropriate territory thus claimed by Spain.

An interpretation that would allow the Dutch, immediately after the signing of the Treaty, to send expeditions and settlements into territory claimed by Spain, and not expressly ceded by the Treaty, would be an illustration of that hateful bad faith mentioned by Grotius (Vol. II, p. 144), where he says:

> "The cavil of Brasidas, therefore, is highly abominable, who, promising that he would evacuate the Boeotian territory, said he did not consider that as Boeotian territory which he occupied with his army; as if the ancient bounds were not intended, but only what remained unconquered, an evasion, which entirely annulled the treaty."

The adjustment of differences between Spain and the Dutch was so comprehensive in the Treaty that not only national claims, but a long list of individual claims were taken account of and settled. It seems to us, therefore, to be "highly abominable" to construe any disputable clause of a treaty, introduced by such a declaration of its purpose, to mean that the Dutch were given liberty to "conquer and possess" territory then claimed by Spain; that is, to make war upon Spain if she defended her claims. It involves the grossest absurdity and the grossest injustice to the Dutch negotiators to assume that they intended to cover, by such a phrase, a right to appropriate territory claimed by Spain—and that without limits.

Article III of the Treaty refers to Europe exclusively, and we do not suppose that as to the lands, fortresses and cities, described therein, it will be denied that there was a cession of them by Spain to the Dutch. The Treaty was the formal renunciation of Spanish sovereignty, and the transfer of dominion to the States General. It was a necessary act to divest Spain's title, and to convert the Dutch seizure in war into a perfect title.

But, on the other hand, the stipulation in behalf of Spain was

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neither a Dutch cession nor a limitation of Spain's possessions; but was to say, "What you have taken you shall keep; what you have not taken I retain." It was not a mutual cession. Spain's title was not "confirmed." The two stipulations did not stand upon the same basis at all. It was simply a method of drawing a line. It was to put the case both affirmatively and negatively: What is on that side I grant to you; what is on this side I do not grant, but keep.

Now, this being the plain effect and meaning of the Treaty, as to the European possessions of the Dutch, why shall a different construction be placed upon a similar stipulation in Article V, relating to other places which the Dutch had occupied during the war? It should be noticed that in Article III, "as to the three-quarters of the Over-Maze" it was provided that they "shall remain in the State they are in at present." But there seems to have been some reason to think that a controversy might arise as to what that "state" was, and a special provision was made for settling such a controversy if it arose—a further manifestation of a purpose by the Treaty to settle all possible causes of controversy.

The situation then as to the lands and places mentioned in Article III was this: After the Treaty the Dutch could support their title as assignees of Spain's title, precisely as Great Britain now supports her title to Guiana by the Dutch cession of 1814.

We come now to the consideration of Article V which deals with the Dutch possessions in Guiana. The provision is as follows:

"V.—The navigation and trade to the East and West Indies shall be kept up and comformably to the grants made or to be made for that effect; for the security whereof the present treaty shall serve, and the Ratification thereof on both sides, which shall be obtained; and in the said treaty shall be comprehended all potentates, nations, and people, with whom the said Lords the States, or members of the East and West India Companies in their name, within the limits of their said grants, or in friendship and alliance. And each one, that is to say, the said Lords the King and States respectively, shall remain in possession of and enjoy such lordships, towns,

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castles, fortresses, commerce and countries of the East and West Indies, as well as of Brazil, and on the coasts of Asia, Africa and America respectively, which the said Lords the King and States respectively hold and possess, in this being specially comprised the spots and places which the Portuguese since the year 1641, have taken from the said Lords the States and occupied: comprising also the spots and places which the said Lords the States hereafter without infraction of the present treaty shall come to conquer and possess."

We quote here also Article VI of the Treaty:

"VI.—And as to the West Indies, the subjects and inhabitants of the kingdoms, provinces and lands of the said Lords, the King and States respectively, shall forbear sailing to, and trading in any of the harbours, places, forts, lodgments or castles, and all others possessed by the one or the other party, viz., the subjects of the said Lord the King shall not sail to, or trade in those held and possessed by the said Lords and States, nor the subjects of the said Lords and States sail to or trade in those held and possessed by the said Lord the King. And among the places held by the said Lords the States, shall be comprehended the places in Brazil, which the Portuguese took out of the hands of the States, and have been in possession of ever since the year 1641, as also all the other places which they possess at present, so long as they shall continue in the hands of the said Portuguese, anything contained in the preceding article notwithstanding."

Of this last article, the British Counter-Case (p. 43) says:

"The object of Article VI was entirely different from that of Article V. It related to trade."

Not so; for Article V also relates to trade. It opens with a most important trade stipulation, and closes with another. Neither article relates exclusively to trade. The trade limits prescribed by Article VI are the respective "possessions" of the Dutch and of Spain; and the definitions of those Dutch possessions, actual and contingent, there given, are effective, standing alone, to confirm an exclusive Dutch claim to dominion as well as to trade. It seems, for some reason, to have been thought necessary by the Dutch—who, we are told, were dictating the Treaty—that the description of the Dutch

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"possessions" in the West Indies and Brazil, contained in Article V, should be more clearly stated.

Articles V and VI must therefore be read together, for both contain a description of places that were to be taken to be held and possessed by the Dutch, though not actually so possessed. Indeed, the description in Article VI is declared to be the more authoritative, for it is to prevail "anything contained in the preceding article notwithstanding." Article V declared that the places possessed by the Dutch should be held to comprise—

"the spots and places which the Portuguese since the year 1641, have taken from the said Lords the States and occupied: comprising also the spots and places which the said Lords the States hereafter without infraction of the present treaty shall come to conquer and possess."

This apparently left it an open question whether the Dutch could seize Portuguese possessions, other than those which the Portuguese had taken from them, "without infraction of the present treaty," and that was to be made plain by Article VI, which was to prevail, "anything contained in the preceding article notwithstanding."

The thought here manifestly was: Portugal had been under the Spanish crown; had revolted in 1640, but Spain had not yet recognized her independence and still had a claim to Portugal and to all Portuguese settlements. An attempt, therefore, by the Dutch to seize Portuguese possessions, other than those which the Portuguese had taken from them, and which were specifically provided for in Article VI, might be construed to be the taking of territory to which Spain had a claim. Therefore, the added stipulation in Article VI:

"As also all other places which they possess at present, so long as they shall continue in the hands of the said Portuguese."

The Dutch thought of expansion for their Guiana settlements was towards the east, and against Portugal, and they wanted the

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consent of Spain that they might seize these Portuguese possessions, else Spain might claim that such a seizure was an infraction of the Treaty. But even this right was not conceded fully. It was to continue only so long as these lands remained "in the hands of the said Portuguese." In other words, if Spain succeeded in recovering them first, the Dutch right to possess them under the Treaty was at an end. Spain was quite willing that the Dutch might raid the settlements of her revolted province, and that manifestly was the purpose. A permit to do so was plainly what was intended by this paragraph in Article V:—

"comprising also the spots and places which the said Lords the States hereafter without infraction of the present treaty shall come to conquer and possess."

But the purpose was veiled. Portugal was not named, and the cautious Dutchmen, it seems, upon reflection, concluded that it was necessary to have a specific consent from Spain; and this Spain was willing to grant, but not absolutely. She desired to weaken Portugal, and was willing to stimulate the Dutch to a raid upon her settlements; but she reserved her rights if she should be so fortunate as to be able to seize them first.

Article VI deals completely with the subject of the possessions of the respective parties in the West Indies and Brazil. Neither is to trade to the places possessed by the other; which is to say, as in Article V, that each shall hold what it possesses. But it was not thought to be enough to leave the places which might thereafter be possessed by the Dutch as they were defined in Article V; and a new definition is attempted, which must be taken to include all of the future acquisitions which were to be allowed by Spain to the Dutch in the regions referred to. It is, therefore, we think, according to the rules of construction, to be taken as the final and authoritative declaration—as a revised restatement, of those places which might be added to the actual Dutch possessions. The language of Article VI as to such possessions carries a grant, and would be complete

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and effectual as such even if nothing had been said about these places in Article V. Indeed this description in Article VI of the places to be contingently possessed by the Dutch is expressly declared to be the one that shall prevail—not as to trade merely, but as to dominion. It is manifestly intended to be a full description and not a partial one. Why, therefore, if, by Article V, the places which "the Lords and States shall come to conquer and possess" in the West Indies and Brazil were other than those places which they might conquer from Portugal, were they not also included in Article VI? Was it not intended to secure the trade of such places to the Dutch? Why was not the language of Article V, as to the respective possessions of the parties, repeated in Article VI? Especially why was the stipulation of Article V, as to the places that they should come to conquer and possess, not included in Article VI, if it was intended to extend to any other places than those which might be taken from Portugal? Here the Dutch were so particular as to secure a cession from Spain, not only of the territory they then possessed in Guiana, and of territory that had been taken from them by Portugal, but to procure title from Spain to other territory then held by the Portuguese, with the purpose to treat the title so procured as justifying them in seizing other lands from Portugal.

If Article VI did not have the effect of releasing Spain's claim to dominion as well as to trade, the seizing of dominion by the Dutch would have been an infraction of the treaty. And, further, if there were other contingent possessions of the Dutch, than those in Brazil—if they were given a right to take, by conquest from the Indians territory claimed by Spain—why were not the trade stipulations of Article VI extended to such places?

Article VI of the Treaty, as a trade regulation, would have been complete with a statement that the trade of each nation was to be confined to its own possessions, actual and constructive as scheduled in Article V; but, for some reason, the Dutch do not seem to have been content to leave it so. The schedule of the

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constructive possessions of the Dutch, in the West Indies and Brazil, is restated. And, in the restatement, the provision of Article V as to lands to be conquered and possessed is omitted, and in the place of it we have the item relating to the conquest of places from the Portuguese. Plainly this was intended to be substituted for, or to furnish an explanation and limitation of, the clause in Article V. In this revised schedule these words, "as also all the other places which they possess at present, so long as they shall continue in the hands of said Portuguese," are substituted for the words, "comprising also the places which the said Lords, the States hereafter, without infraction of the present treaty, shall come to conquer and possess." The new schedule defines the places that may be conquered and possessed, and the definition is a limitation.

If, as the British Case affirms, Spain was "practically at the mercy of the Dutch," so that the Dutch could and did dictate their own terms in the treaty, there could be no possible reason, so far as Spain was concerned, for any veiled or doubtful expression of any concession exacted from her. If the Dutch demanded a right to extend the bounds of their existing settlements to the south and west, and the demand was yielded, we should look for a clear statement of the concession, and not for the obscure and doubtful clause to which that effect is given by Great Britain. If a veiled expression is used, instead of a plain and direct one, we must conclude that the Dutch had some reason for it, and one that related to some other power than Spain. No reason can be found, if Spain only was to be affected; but a most natural one is found when the purpose to secure a release from Spain to territory that was to be wrested from Portugal is disclosed. The Dutch did not desire that Portugal should know, in advance, of the contemplated raid upon Brazil, and Spain was quite willing that Portugal should be taken unawares. It was not simply that the Dutch contemplated the recovery of the territory Portugal had taken from them. That, perhaps, could not be hidden. The driv-

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ing of Portugal out of Brazil was a thing that did need cover. But, when the next section came to be framed the cautious Dutchmen who were dictating the treaty apparently concluded that the veil was too heavy; that Spain might, with good reason, claim that an attempt to seize the territory of Portugal was an infraction of the treaty, and this must be provided against. The clause introduced in Article VI makes this provision, but in such a way that it might be said—as it is now said—that it was only a grant of an exclusive Dutch right to trade to Brazil, while it was really effective to estop Spain from treating the conquest of Brazil as an infraction of the treaty, and to transfer the Spanish title.

We remark further that—in view of the great care taken to specify that the recovery from Portugal of settlements made by the Dutch in Brazil, and even the seizure of the whole of Brazil from the Portuguese, should not be treated as an infraction of the treaty—it is impossible to believe that the question of the seizure of territory directly from Spain, up to the very banks of the Orinoco, would not also have been provided for if such a project had then been contemplated. The Dutch knew that such a seizure would be regarded as an infraction of the treaty, even more certainly than the recovery of the lost Dutch settlements or the seizure of other Portuguese territory from which Spain had already been driven. The contemporaneous acts of the Dutch confirm our contention; for, as Great Britain concedes, it was not until the allowed extension on the Amazon had been balked that the Dutch turned their eyes to the prohibited west.

It is not capable of belief that, while taking such care to acquire the cession of Spain to territories in the actual possession of Portugal, and which could not be recovered except by war, the Dutch were left at liberty, without any infraction of the treaty, and without any stipulation that it should not be so regarded, to extend their possession on the west, even to the Orinoco itself.

In the British Counter-Case (p. 41), it is said:

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"In the absence of provision to the contrary Spain might have claimed the right to possess any territory won back from Portugal. This concession to the Dutch was a recognition of their right to acquire, if they could, territory which Spain had at one time hoped to regain. But the words which immediately follow—'including also the localities and places which the same Lords States shall hereafter without infraction of the present Treaty come to conquer and possess,' clearly introduce and refer to a completely new subject. They contemplate something beyond, and in addition to, the recaptures to be made from Portugal; they are unnecessary if they only refer to territory occupied by Portugal."

The fault here is, that the fact that there were two classes of "territory occupied by Portugal" is suppressed. Article V. expressly provides for one class, namely, lands taken from the Dutch by Portugal; but the other class, namely, lands of the Portuguese, that the Dutch had never possessed, are only included by reference to the general clause. Those lands were the "new subject" referred to in that clause.

Portugal itself and all these Portuguese settlements were claimed by Spain; and the seizure of them by any other sovereign would have been an act of war against Spain, precisely as the seizure of the State of Florida by Great Britain, during the Civil War in America, would have been an act of war against the United States. The revolt of Portugal had not destroyed the Spanish title, and the Dutch plenipotentiaries at Munster did not make the mistake of supposing that they could seize territory from Portugal without the consent of Spain. Indeed, but for the purpose of the Dutch to seize those lands from Portugal, the words referred to would have been unnecessary, and not only unnecessary, but an insult to Dutch sovereignty. Can it be supposed that the Dutch—whose sovereignty was acknowledged by the Treaty—found it necessary to stipulate with Spain that they might possess and own lands that they should thereafter conquer from England, or lands that they should discover and settle? Such rights are inherent in sovereignty, and it cannot be supposed that the proud Dutch plenipotentiaries, dictating a treaty of peace—as

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we are told—thought it necessary to stipulate for the consent of Spain that they might in the future acquire title to territory to which Spain had no claim, through those ordinary sources of title by which national dominion is acquired. The stipulation that their possessions should extend to places that they should thereafter conquer and possess must have relation to Spain and to the taking of some territory to which Spain had a claim; else it is not only senseless but derogatory to Dutch sovereignty.

In the absence of a further provision to the contrary, Spain might rightly have regarded any attempt to seize, from Portugal, territory other than such as had been taken from the Dutch, as an invasion of Spain's rights and an infraction of the treaty. The words quoted were necessary to cover the case if the Dutch desired to have the right to seize from Portugal territory other than that which they (the Dutch) had once possessed. So these words are given a meaning. They are interpreted by Article VI. Why should they be supposed to give the right to seize territory anywhere claimed by Spain at the date of the Treaty? They cannot have such a meaning. A treaty of peace cannot be construed to give liberty to one nation to conquer territory claimed by others; nor can any reasonable, disinterested man persuade himself that it was the purpose of the treaty, either expressed or implied, that the Dutch—after being secured in the places they then possessed—were given permission to extend their bounds indefinitely into territory claimed by Spain. It would be to say, "Keep all you have taken from us and take all you can. It was never in the contemplation of either party to the Treaty of Munster that the Dutch should be at liberty to spread their possessions westward and in the interior, so as to possess "the Dardanelles of the Orinoco" and to "approach to the very heart of Spanish Guiana."

The United States Commission requested Prof. George Lincoln Burr, of Cornell University, to prepare and submit a report as to the meaning of the clause "comprising the places which the said

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Lords the States hereafter without infraction of the present treaty shall come to conquer and possess," found in Article V of the Treaty of Munster. The report submitted by him is printed in volume 2 of the Counter-Case of Venezuela. Professor Burr, after making the report, was sent by the Commission to make an examination of the Dutch Archives, and found nothing inconsistent with the conclusions he had reached. He shows:

1. That the only places mentioned or suggested by the record we have of the negotiations that led up to the treaty, as being in the minds of the Plenipotentiaries in the use of the terms other "places" that the Dutch might "conquer and possess," were those to be won from the Portuguese in Brazil.

2. That in all the controversies and conflicts that followed the treaty as to territorial rights, the Dutch never appealed to the Treaty of Munster in support of any aggressions on territory claimed by Spain; never sought to use the treaty as Great Britain is now seeking to use it.*

3. That among all the authorities consulted by him he had found no other interpretation of the clause under consideration than that it refers to Portuguese possessions. (V. C.-C., vol. ii, p. 13.)

The failure of the Dutch Governors of Essequibo and of the States General, in any of their conflicts with Spain, to refer to this clause of Article V of the treaty as justifying the attempted extensions of the Dutch boundaries should, we think, be accepted as a conclusive construction of the clause. If it had the meaning now contended for, it was the sole basis upon which such extensions could be justified. If the Dutch limits had depended upon conquests from the natives, the resident Governors who had made the conquests would have known their limits and would not have

* In a note (V. C.-C., vol. ii, p. 13) written after his examination at The Hague, Professor Burr says: "To other clauses of the Treaty I find the Dutch appealing; to this never." In the same note he gives an instance where Spain did appeal to it in a protest against a proposed Dutch settlement in the region of Darien; and in a postscript (*ib.* p. 14) he gives another Spanish exposition of the treaty addressed to the Dutch Government in 1786.

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been appealing to the home authorities to give them a boundary. Every act of resistance by Spain to the extension of the limits of Essequibo was a disaffirmance of the construction of the Treaty now set up. And the failure of the Dutch at any time to set up the Treaty as a justification of such extension gives us a contemporaneous construction by both the parties to the Treaty.

We then have Great Britain insisting upon a construction of this clause that was never claimed for it by the Dutch; that was always repudiated by Spain; and that is inconsistent with the reason and spirit, and, indeed, with the very words of the treaty. It should be noted that if the British construction is admitted, this clause of Article V cannot be limited to Guiana, but embraces the whole world, and gives to the Dutch the right to "conquer and possess" any lands claimed by Spain the world around, that they might assume were not "effectively occupied" by her, in the sense of those terms given in the British Case. There is no limitation of the clause that can be suggested, save that it related to the Portuguese possession.

It is said (B. C.-C., p. 44) that before 1648 the Dutch did not recognize Spain's title to territory not effectively occupied by her, but expressly repudiated such title, whether based upon the Papal Bull or upon discovery. As to title by discovery, this is not a correct statement of the Dutch position. Discovery, as a source of title, was recognized by the Dutch as by every other European nation; and the doctrine of the British Case, as to the character of the occupation necessary to perfect that title, was never put forward by the Dutch, or by Great Britain, in the seventeenth century. The views expressed by the Dutch in the New Netherland controversy were, as we have seen, such as would give to Spain a wide claim in Guiana.

Spain's claim to the whole of Guiana might be contested, but it was not to be treated as baseless or fictitious, and was not so treated by the Dutch. They well knew that the Spanish claim made their rights insecure. They demanded and secured a release

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of that title and afterwards set up that cession as a muniment of the Dutch title. They were careful to get a release to all territory claimed by Spain that they then occupied, to all that they had once occupied and had lost to Portugal, and to any further territory they might be able to take from Portugal in the future.

Now, as to lands on the west; they *knew* them to be claimed by Spain; they knew that any occupancy of them would be treated by Spain as an infraction of the treaty; they took pains in Article VI to specify against a seizure from Portugal being so construed, and would have taken the same precaution on the west if they had supposed they were securing the right to occupy them. They left Spain's claim there untouched, and not thereafter to be contested by them.

The British use made of the clause of Article V of the treaty relating to places to be thereafter conquered, involves the concession that without it the Dutch could not have extended their bounds without an infraction of the treaty. It conferred the right to take territory somewhere that could not otherwise have been taken. Great Britain says it was the disputed territory—if it was, then the Dutch acknowledged Spanish rights there.

This statement, made in the British Counter-Case (p. 132, par. 14) seems to commit Great Britain definitely to the proposition that any Dutch right to extend their possessions in Guiana is derived from the Treaty of Munster:

> "These settlements [on the Pomeroon] were not in violation of the Treaty of Munster, but were *expressly* in accordance with the rights reserved to the Dutch by the Vth Article of that Treaty."

It follows that unless the British contention as to the meaning of the disputed clause of Article V is allowed, the Dutch had no right to extend their possessions in Guiana.

The treaty must be construed in the light of the known claims of the parties to it. These were: Spain's direct claim to the whole of Guiana and to Brazil through Portugal; and a Dutch claim to what they had taken and then occupied in Brazil and in Guiana,

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and to what they had lost in Brazil, after occupation, to Portugal since her revolt. The Dutch made no claim to any lands in Guiana beyond the proper line of their then possessions. These claims made all of the disputed territory to belong to one or to the other, and the adjustment of these claims required the drawing of a boundary; there was no other way. And it must be presumed, if not expressly left open for a future adjustment, that these claims were adjusted by the treaty. The Dutch dictated the treaty, and it must be construed strictly against them. Spain is not to be taken to have released any territorial claim by implication; nor can the Dutch rest a claim to make future "great extensions" of their possessions upon implications or doubtful phrases. A specific enumeration of what the Dutch were to have cannot be enlarged by implication. It is equivalent to saying they shall have nothing else at the cost of Spain. If, before the treaty, the Dutch might have disputed Spain's claim to adjoining territory not within her effective occupation, they could not do so afterwards. The consideration for Spain's confirmation of the Dutch title was the limitation of the Dutch title to their actual possessions. Spain claimed that she possessed the whole of Guiana by a perfected discoverer's title, and the treaty adjusted that claim. Unless, therefore, it contains an express stipulation that the Dutch may further limit Spain's claims, such extensions were wrongful. The phrase as to other places to be conquered and possessed, having by the treaty been given an express application to the Portuguese possessions, cannot by implication be construed to further restrict Spain's claims or to take from her territory not specified. A construction that would authorize the Dutch to build a post at Barima the next day after the signing, would violate every rule of construction and make the treaty a trick and a fraud.

If the Dutch did not regard Spain as having any claim to the settlements they possessed in 1648, in Guiana, and did not ask or take any grant or release from Spain as to them, why

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should they be so careful to get the consent of Spain to the reconquest of what they had lost to Portugual? What had Spain to do with that? If the Dutch occupation of those places gave them a perfect title—and it was the same title they had to Essequibo—the right to retake them was equally perfect. It is only because, back of the Dutch occupation of all these places—those held as well as those lost—there was Spain's claim and right, which the Dutch insisted must be released to them. Now they knew that this same Spanish claim covered all of Guiana, and that as to the region now in dispute no other nation had then any pretense of dominion or settlement. Is it then to be supposed that, while taking a transfer of the Spanish title to lands that Spain had lost to them, either by conquest or occupation, and to other lands lost to tbe Portuguese in war, the Dutch were left at liberty to appropriate, at their pleasure, Spain's title to lands she had never lost, without an express cession? The title the Dutch took from Spain to the lands they possessed was precisely the same title that Spain had to the adjoining lands, and if they had contemplated seizing the latter they would not have left their right to do so without a clear expression.

The effect of the treaty was to cut off, from a region claimed by Spain, specified parts thereof. If the boundaries of the parts given to the Dutch had been definitely laid down in the treaty, the legal effect would not have been different. Yet, if the treaty had fixed the Essequibo as the western boundary of the Dutch possessions, would we still have had a claim that the Dutch were at liberty to go beyond it? That the Essequibo was not the boundary between Spain and the Dutch?

Spain was not releasing any claim, save to the Dutch. She was not making a cession to mankind, or establishing a world's common. The Dutch were seeking advantages for themselves—to acquire territory, not to open a region to settlement by their active trade rivals on their own borders. If the Essequibo was their western boundary, by the treaty, it was not to their interest to

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require Spain to open the west bank to an English or a Swedish settlement. The protest against a Swedish settlement in 1734 on the Barima, shows that the Dutch did not then hold that the region was *terra nullius*, but that Dutch bounds and Spanish bounds were co-terminous; that there was no room for strangers.

We think it must be clear then that, unless the Treaty of Munster expressly and clearly gives to the Dutch the right to extend their possessions in Guiana in derogation of Spain's claims, any such extensions would be an infraction of the treaty. This conclusion seems to be accepted by Great Britain, for she seeks to find in the treaty a stipulation authorizing such an extension. The contention is that Article V of the Treaty of Munster, in the clause so much disputed, gave to the Dutch the right to extend their possessions over "the unconquered and unoccupied territories then in the possession of native tribes" (B. C.-C., pp. 41–42).

Is it meant that this right to "conquer and possess" the lands between the Dutch and the Spanish settlements was a special, exclusive right given by Spain to the Dutch, or only a recognition of Spain's want of title to these lands; that they were *res nullius*, and so open to the occupation of all nations? The propositions are inconsistent, and one of them must be abandoned. If the first is maintained, these things are involved:

1. A further contingent cession by Spain of territory on the west of the Dutch settlements.

2. The recognition by the Dutch of an *exclusive Spanish right to this territory. For Spain could not grant what she did not have.* If the Dutch derived from the treaty an exclusive right to occupy the disputed territory, then Spain before had that exclusive right.

3. That the contingent right given could only be perfected by a conquest of the native tribes, followed by an effective occupation, and that until so perfected, it remained Spanish.

4. That the boundary was a common, but a shifting and indeterminate one.

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We think we are quite safe in saying that, from the very beginning, neither the Dutch nor Spain ever allowed that there was any territory between the Essequibo and the Orinoco that was not either Dutch or Spanish territory; and that since the cession to Great Britain that government and Spain have held the same view. Neither party to this contest—either by itself or its predecessor—has ever justified its entry or its presence in any part of the disputed territory upon the claim that it was "*terra nullius*," after 1648. The Dutch said, "You have crossed the line into our territory." Spain's answer was, "No, the line is not there, but here." Both agreed that there was at all times a common boundary; though it had not been laid down. They differed as to its location, but neither claimed at any time that the line of right was a shifting one—here to-day, there to-morrow. In all these disputes, the Dutch never defended any post or shelter, expedition or trade, upon the theory that the original bounds of the colony, as prescribed by the Treaty of Munster, had been enlarged by conquest, or that any adjoining territory, outside those bounds, was not Spanish. Nor did they ever claim that the bounds of the treaty had been or could rightfully be enlarged within the disputed territory, by virtue of any provision in the treaty itself.

We are not quite sure whether the British case is rested upon the proposition that the privilege to "conquer and possess" is to be taken as a general renunciation of all of the vast regions claimed by Spain throughout the world, but not yet "effectively occupied" (in the sense of the British contention), or only as a special permit to the Dutch to take what they wanted. And it does not matter much—for neither is tenable.

The construction that the right to acquire by conquest related to native tribes, is contrary to the accepted European view of the relation of these tribes to the territory they occupied. Such lands were not treated as accessions by conquest, but by discovery or settlement; and only a nation having already an original title

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could, either by conquest or treaty, acquire the possessory right of the tribes. To make war on the tribes was to make war on the nation having that original title, if there were such. And if there were none such, it was to take title to lands *terra nullius* – not title by conquest. The terms "conquer and possess" were appropriate if applied to territory held by Portugal, and wholly inappropriate if applied to lands occupied by savage tribes and owned by no civilized nation.

But, if the British construction of the disputed clause of Article VI could be allowed, what would result? That construction is, as we understand, that the earlier provisions of the treaty confirmed the Dutch title absolutely to the places in Guiana then possessed by them, and that the clause in question gave them the right to conquer from the native tribes and to possess further territory not then "effectually occupied" by Spain. It cannot be claimed that this clause could have any effect to make the then possessions of the Dutch any larger than they would have been without it. The bounds of Essequibo were not enlarged. New territory could only be acquired by new conquests and new settlements. The Dutch objection to the Spanish title, as we are told, was that Spain's occupation of the territory was only a constructive occupation, and it will hardly be argued that a constructive Dutch occupation was to be made effective. The necessary conclusion from the British premises is, that the Dutch could acquire new territory only by an effective conquest and an actual occupation. Now, as we shall show in another place, the Dutch never subdued any one of the tribes, and never made a permanent new settlement within the disputed territory, except in the Pomeroon-Moruca region.

As Mr. Blaine said, in one of his despatches, the claims of Great Britain in Guiana have been rested on a "shifting foot"; but we are now fairly entitled to know from her whether her claims in the Cuyuni basin are rested upon the proposition that the Dutch settlement at Essequibo made that basin a Dutch pos-

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session in 1648—one that was confirmed by the general clause of the treaty; or upon the ground that the basin was part of that region that the Dutch were given the right thereafter to "conquer and possess." To affirm the latter proposition is to abandon the water shed claim, for it involves a Dutch admission by treaty that the basin was not appurtenant to Essequibo. Our answer to the water shed claim will be made in another place.

We have perhaps already spent too much time in this discussion, and we therefore conclude it by saying:

FIRST.—That both of the signatories to the Treaty of Munster treated it as a cession by Spain to the Netherlands.

SECOND.—That the absolute cession was of lands actually possessed by the Dutch at the date of signing.

THIRD.—That the contingent cession related wholly to places occupied by the Portuguese.

FOURTH.—That the treaty established a common Dutch-Spanish boundary, and neither interposed a *terra nullius*, nor gave to the Dutch any special license to extend their possessions to the north or west.

FIFTH.—That Great Britain's construction of the treaty, taken in connection with her contention as to effective occupation, involves the monstrous and impossible conclusion that Spain gave to the Dutch, or opened to the world, the right to seize the mouth of the Orinoco, and to isolate all of her settlements in the interior.

SIXTH.—That to give a disputable phrase in a treaty of peace a construction that would leave unadjusted so important and so threatening a question is absolutely inadmissible.

SEVENTH.—That any extension, within the disputed territory, of the actual Dutch occupation of 1648, was an occupation of territory that the Dutch had admitted to be Spanish territory and not *terra nullius*.

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CHAPTER X.

ADVERSE HOLDING—DUTCH BOUNDARY.

There is no more important branch of this investigation than the examination of the territorial claim of the Dutch authorities during the century and a half of their possession of the Colony of Essequibo.

By the Treaty of Munster the title of the Netherlands was confirmed to the possessions which they had carved out of the territory of Spain, and the two European States were thus brought into territorial contact. The Treaty had failed to state by geographical points or lines the Dutch boundary, and a temptation was thus offered to the manufacture of pretensions and claims, which few States situated as the Netherlands then were have found themselves able to resist, and to which the latter would no doubt have yielded had their new charter in 1764 not restricted them in terms to the Essequibo and Pomeroon.

The situation was somewhat exceptional, by reason of the fact that Essequibo was governed not by officers reporting directly to the national executive, but by a private trading corporation, to which vague powers of government had been delegated. These powers, as has been explained, included the ordinary management of the foreign relations of the colony as they arose in and near the colony itself. During the whole period of one hundred and sixty-six years from the Treaty of Munster to the Treaty of London, by which the "Establishment of Essequibo" was ceded to Great Britain, but three occasions are recorded in the evidence where the Dutch West India Company called upon the Government of the Netherlands to intervene, and upon these occasions the local authorities of the colony had already taken international action. During all the period, the Company, as far as the evidence shows, were, with these exceptions, left by the States-General to

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manage their affairs as they pleased. Even on the three occasions referred to, when representations were made to the Spanish Government, the States-General took the facts and the law as the Company presented them, and confined their action to directing the Dutch Ambassador at Madrid to give formal expression to the request or remonstrance which the Company set up.

In view of these facts, the question of importance is not what the States-General thought and claimed, but what that branch of the Government of the Netherlands thought and claimed, in which resided the powers which the States-General had set apart and delegated for the purpose of managing and controlling the colony. Owing to their deputed powers of quasi-sovereignty, the Company's claims and the Company's admissions were the claims and admissions of the State itself.

The importance of this inquiry in a boundary dispute is obvious. The question is, What are the rights of the parties to the dispute? A court cannot take their respective pretensions as evidence of their rights, but it can and must take the limits of their pretensions as evidence of that to which they have no right. When one State claims a certain point as marking the boundary between it and another State, it admits the title of the other State to all beyond the point claimed, and it is bound by the admission. In making a claim of right, what it does not claim as of right it concedes as of right.

Next in importance to the actual claims are the grounds upon which the claims are advanced.

As has been already shown, the Treaty of Munster was a treaty between Spain and the Netherlands, and the question is not what interpretation Great Britain, who was not a party to it, puts upon the Treaty, but what was the understanding of it by the parties themselves. The British case is at pains to quote Major Scott (p. 28), the commander of the force that captured Pomeroon and Essequibo in 1665, as saying that by his conquest English possessions were extended from Cayenne to the Orinoco. Apart

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from Scott's tendency to braggadocio, he is a discredited authority; but the objection to his testimony lies deeper. The question is not what a British officer thought should have been the Dutch claim, but what was the Dutch claim. For this we must look to the Dutch themselves, and we must look to what they said and did in reference to it. We must look to their acts as well as to their words, and not only to the words found in their formal international communications, but still more to the words of their unrestrained and confidential intercourse and correspondence, when they settled down for that long period of a century and a half with the Spanish as their neighbors on a common frontier. This correspondence we possess, and it is in evidence in this case. It is a correspondence between the directing head of this quasi-sovereign company in Holland and its directing head in the colony. It was carried on with that unrestricted freedom with which men write when possessed of the firm belief that their letters will never be seen except by those to whom they are addressed. It lays before us, as in an open book, the thoughts, purposes, claims and reasonings of the sovereigns of Essequibo. After reading it we know exactly where they stood on the question of boundary.

The first position taken by the Dutch West India Company on the question of American titles is perhaps the most important. It is contained in the "*Deductie*" formally presented by the Company to the States-General November 5, 1660 (V. C., vol. iii, p. 367), and already referred to.

Their words are:

". . . the Dutch nation must instead be preferred, being considered the same as in earlier times, namely, vassals and subjects of the King of Spain, first discoverer and founder of this new American world, who since, at the conclusion of the peace, has made over to the United Netherland Provinces all his right and title to such countries and domains as by them in course of time had been conquered in Europe, America, etc."

Two vital points are established by this document. First, it was a solemn recognition by the West India Company of the

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Spanish title to the King's possessions in America by discovery and "founding" or occupation. Secondly, it was a solemn recognition that what the Netherlands had taken by the Treaty of Munster, and what the King of Spain had made over, was "all *his* right and title" to such territories as the Dutch had conquered in America. It was a declaration that the Treaty of Munster was, not as the British Case contends, a mere mutual acknowledgement of title, but that it was an actual cession to the Netherlands of the title of the King of Spain. It was a declaration that the West India Company were his grantees, and it was an absolute and unqualified admission that the title to all the territory not so ceded was still in the Spanish Crown. It even went so far in its reliance upon the prior Spanish title as to make a "far-fetched" appeal to it as a ground of priority over the English in North America, in that the Dutch at the time of the first discovery and occupation were themselves the vassals of the King of Spain. It established the fact that the Dutch could not extend their possessions beyond those ceded by the Treaty of Munster, except by encroachment upon Spanish territory, and that, therefore, the only claim which they could ever raise to such territorial extensions was a claim of adverse possession.

In the face of this document there is no escape from the position that the Netherlands, as represented by the Dutch West India Company, could not acquire one foot of territory, and that their grantees in this controversy could not be entitled to one foot of territory, beyond that which the Dutch acquired in 1648, except in accordance with the rules governing adverse holding.

This declaration alone finally disposes of the ultimate British contention of a *terra nullius*, to which any possession prior to the Treaty of Arbitration, however recent, may give title.

In 1674, as already stated, the old Dutch West India Company came to an end and a new Company was created, with a new charter, by which the operations of the West India Company, on the mainland of South America, were confined to two

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points, namely, Essequibo and Pomeroon. Beyond these two points the Company possessed no authority under the charter.

The charter of 1674 (B. C. I, 173) therefore, shows conclusively that any territorial claim made by or through the Dutch West India Company—and, as we have seen, there could be no other Dutch claim—by reason of operations wholly or in part subsequent to 1674 must be confined to the Essequibo and the Pomeroon, because from this date down to the final termination of its existence, in 1791, the West India Company had, under the terms of the act creating it, no power to operate on the mainland of South America beyond these points. It would, therefore, make no difference what settlements they created, or what control they exercised, other than at these points; any such settlement or control was *ultra vires*.

Starting with these two formal declarations—one of the Dutch Government, the other of the Dutch Company; one defining the points at which alone the charter was operative, the other recognizing the prior Spanish title by discovery and occupation, we find for a hundred years after the Treaty of Munster not a whisper of territorial extension, much less of territorial claim, outside of the chartered limits. Neither in the mind of the Company at home nor in that of the Commandeur in the colony can any trace of such a proposition be discovered.

On the contrary, upon the only occasion during this period when the question arose, the Dutch Governor admitted the territorial title of Spain and her right to exercise territorial dominion in the now disputed territory, and the Company passed over the report of his admission without comment. This was the occasion of the prohibition of the Dutch horse-trade in the Cuyuni, one of the most important episodes in the history of the Guiana boundary question.

Horses and other live stock were then, as for more than a century after, the principal product of the colony of Spanish Guayana, and its principal article of trade. The horse trade with the

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Spanish was most essential to the Dutch colonists, because at the time it was their main, if not their only reliance, for these animals so indispensable in the production of sugar, the staple of the colony of Essequibo.

The trade is first mentioned in 1693 (V. C. II, 63), when the Company writes to the Commandeur that

"No slight advantage, moreover, has been brought to the Company through you by your having found out, *up in the river of Cuyuni*, a trade in horses."

The locality here referred to, as already explained (p.), is the Cuyuni valley above the falls.

This trade is spoken of from time to time during the following years—in 1697 (*Id.*, 65), when reference is made to the price "paid for the horses bought for you *up in Cuyuni*," and again in 1701 (*Id.*, 65), at which latter date it is reported that

"The trade in horses *up in Cuyuni* does not go as briskly as it used to do."

In 1702 the reason for this change becomes apparent. War was then about to break out in Europe, and the Cuyuni horse trade suffered in consequence. The Spanish authorities prohibited the trade, as they were entitled to do, in the Cuyuni basin, which was their territory, and the testimony to both these facts, namely, the territorial rights of Spain and the exercise of these rights by prohibiting the horse trade is given by the Dutch Governor himself (V. C. II, 68). In proposing to the Council that they should purchase horses out of a Rhode Island ship, a thing forbidden by the Company, he advises, in view of the urgent necessity of the colonists, "that they agree and consent hereto, the more so because *all the lands* where we carry on our horse-trade, are under the King of Spain"; and the following year, 1702, he reports to the Company the death of horses, which "truly is a great loss to the Colony, the more so since the Spaniards will no longer permit any trafficking for horses *on their territory*" (V. C. II, 68).

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In the following year he renews his complaint and puts the cause of the trouble on the same ground as before, saying that "owing to the present war, no horses are to be had *above here* as formerly, inasmuch as those Indians think they stand under the crowns of Spain and France, and this trade is thereby crippled. We cannot, however, get on without these and attain our object, having lately lost many of them by sickness" (V. C. II, 69).

What is the significance of the above citations? Here are three statements made by the Governor of Essequibo, in three separate years, which assert in terms as plain as can be framed: First, that the territory of the Cuyuni valley is the territory of the Spaniards—not merely that they claim it to be their territory, but that it is their territory—that there is no question about it; and, secondly, that upon their territory, namely, "up in Cuyuni," "above here," the Spanish authorities assert their territorial rights and prohibit the Dutch from engaging in a trade of the utmost importance to the latter. At this early day, in the opening years of the eighteenth century, Spanish control was sufficiently active to command and enforce a prohibition of trade in this wilderness.

What does the Dutch Governor do when his colony is thus cut off from an article so essential to its existence? Does he protest to the Spanish authorities? Does he suggest a protest to his own Government? Does he claim either to his own Government or to the Spanish that this is Dutch territory, even when he knows and himself reports that the prohibition is based on a territorial claim? So far from disputing the rights of Spain in the territory, he states and admits them as an established fact, and acquiesces in their enforcement on this ground. The action of the Dutch Governor is more than an admission of the absence of any territorial right in the Netherlands; it is an express recognition of the territorial rights of Spain.

A recognition of Spanish sovereignty in the Coast Territory was made in a letter of the Dutch Governor in 1694, where he

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said "Most of the red slaves come from the rivers Barima and Orinoco, which lies [*sic*] under the dominion of the Spaniard"—evidently referring to the region in the neighborhood of the two rivers.

Not for half a century afterwards was any reference made to territorial claims or territorial extension west of the Essequibo and the Pomeroon.

The attitude of Spain during this period was that of a territorial sovereign holding possession of and dominion over the territory in question up to the Pomeroon and the Essequibo. When the occasion arose it did not hesitate to assert its dominion, as in the Cuyuni horse trade and in the lower Orinoco, where from time to time Dutch traders were arrested for a violation of its regulations (B. C.,).

Upon such occasions the assertion of dominion was received with entire acquiescence. The sovereignty of Spain was not only unquestioned but admitted.

As time wore on, however, the more farsighted of the Spanish officials, who were familiar with the conditions in Guayana, perceived that a time might come when the Dutch, under the lead of an aggressive Governor, would attempt to encroach upon their territories.

In the *Memorias* of the Marquis de Torrenueva on the Commission in Seville in 1743, this possibility seems to have been seriously considered for the first time (B. C. II, 41).

Torrenueva was looking broadly at the condition of the Spanish colonies in America, and had observed the importance of checking the "usurpations" of Brazil in South America and of the French on the Mississippi, and he remarked that equal attention is due to "the object with which the Dutch established themselves to the windward of the River Orinoco." Of this object, he says: "And this could be no other than to get nearer to the mouth and banks of the said river, and to found thereon plantations, which might facilitate their traffic with the New

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Kingdom and enable them to penetrate by that part to those places and districts which their avarice might dictate until they made themselves masters of the mouth of the Orinoco, and the nations that dwell there, in a vast extent of 260 leagues from there to the 'villa' of San Juan de Los Llanos."

He recommends that to check this advance the mouth of the Orinoco should be occupied by a fort and a town. He does not refer to any act of encroachment that has already taken place, and he evidently has no such act in mind. His recommendation is based wholly on the possibility of what may happen in the future, but he suggests an inquiry as to the points then occupied by the Dutch in Guayana, "to consider whether they were in possession of those territories at the time the Treaty of Munster or Westphalia was signed in 1648, taking the necessary measures for the purpose, in connection with what was stipulated and is deduced from Article V. of the said Treaty,"—whether, in other words, the treaty included anything on the Essequibo beyond Kykoveral—a suggestion which shows that in Spain the basis of determining the boundary line was clearly understood, and that it was suspected that the early Pomeroon settlement was an unwarrantable intrusion.

It is worthy of remark that this first expression of apprehension on the part of a Spanish statesmen as to the possibility of Dutch aggression in Guayana was coincident with the appointment as Commandeur of the colony of the first Dutch official, and it may be said the only Dutch official, to conceive a policy of territorial acquisition by means of encroachment. This was Storm van's Gravesande, whose administration as Commandeur and Director-General lasted from 1742 to 1782, and who is the sole author of the Dutch boundary dispute. The history of that dispute is confined to Storm's administration. It came to an end with his retirement from office, only to be revived in the next century as a British dispute by the geographer Schomburgk.

Storm's theory on the question of boundaries was a theory

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not of territorial right, but of territorial encroachment. Like Schomburgk, he believed in the rectification of frontiers. The Company did not believe in his plans, and refused to adopt them. On the question of right, they decided that they could find no ground for a claim to territory to the westward, and their suggestion of such a claim in their First Remonstrance of 1759 was based upon a misapprehension of the facts upon the discovery of which it was quickly withdrawn.

I. Interior Territory.

The question first came up in Storm's mind when the progress of the Spanish missions in the savannas near the Cuyuni gradually attracted his attention. The missions had been at work in the 17th century, but the founding of permanent settlements had begun in 1724. Before 1746, when he wrote his first letter on the subject, several of these settlements, such as Cupapuy, Alta Gracia, Divina Pastora, with its immense cattle farm, Cunuri, and Tupuquen had been established on the rivers tributary to the Cuyuni, while others had been founded in adjoining territory on the south of the Orinoco. From that time on Storm makes the boundary the subject of continual letters and appeals to the Company. He represents that he is unable to do anything as to the Spanish settlements, because he does not know at what point to set up a western boundary.

This new boundary he wishes the Company to fix. The question that he presents is not a question of title. In that he takes no interest. What he proposes is territorial extension, but he wishes definite authority from the Company as to the point to which he shall extend. Finding that the Spanish settlements are moving eastward, he desires, if possible, to erect a barrier. Being unable to extend his settlements, the next best thing is to extend his boundaries. For topographical and other reasons, plantations cannot be created beyond the actual boundary at the Cuyuni falls. His plan is, therefore, to set up a territorial claim; but he cannot

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set up such a claim because he does not know what boundaries the Company will set for it. He has no reason for supposing that the boundary is beyond the falls. No such claim had even been set up or even heard of before; but in view of the Spanish approach, he is satisfied that such a claim is desirable, and that it must and will be made by the Company. Will the Company tell him what it is?

That the above correctly states the position of the Colonial authorities is shown by the correspondence.

In July, 1746 (B. C. II, 45), when Storm had received word that the Spaniards had established a new mission on the settlement, he writes:

"I feel not the least diffidence as to dislodging them from that place and capturing those forts, but such a step being one of great consequence, I dare not take anything upon myself, especially as the proper frontier-line there is unknown to me."

On December 7, 1746 (B. C. II, 46), the Commandeur again writes about the Spanish fort and mission up in the Cuyuni, and states that the inhabitants are very much aggrieved thereat;

"and the Carib Indians a great deal more so, since it perfectly closes the Slave Traffic in that direction from which alone that nation derive their livelihood. They have also expressed a desire to surprise the Mission and level it to the ground, which I not without trouble, have prevented, because they belong to our jurisdiction, and all their trade being carried on in the Dutch Colonies" [that is, the slave trade], "such a step would certainly be revenged upon us by the Spaniards. It is very perilous for this Colony to have *such neighbours so close* by, who in time of war would be able to come and visit us overland, and especially to make fortifications in our own land is in breach of all custom. I say upon our own land—I cannot lay this down, however, with full certainty, because *the limits west of this river are unknown to me.*"

The above shows clearly that in this Colony of Essequibo, which had been in existence for a century, there was no knowledge of any territory belonging to the colony west of the river. As the Commandeur says, "The limits west of this river are un-

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known to me." He knows that the plantations are on the river below the falls, but beyond that he knows nothing.

One significant conclusion to be drawn from this is that there could have been no settlements west of the Essequibo. If there had been, the Commandeur would not have said that he had no knowledge of the limits west of the river.

In a report of Storm, dated March 23, 1747 (B. C., II, 48), is a statement that "the Spaniards had made a journey in the south-western direction right behind us, and had there discovered the origin of the Rivers Cuyuni and Massaruni," flowing out of a great lake, and that their intention was to establish a permanent settlement. The letter concludes:

"I should already long ago have removed and demolished the first fort up in Cuyuni (*which even now is easy of accomplishment on my part through the Caribs*), if I were but rightly conscious how far the limits of your Honours' territories extend, both on the eastern and northern sides, as well as south and westwards, *for the decision whereof not the least help is to be got in this office here.* I therefore earnestly request your Honours to be pleased to send hither the necessary information concerning that matter, because an error in this might lead to quite too evil consequences."

It is significant that the Commandeur, especially as intelligent a man as Storm, could get no information whatever on the boundary question in the records of the colony. It is a conclusive proof that the Dutch had at this time never made a claim or established a settlement in the territory now in question.

The Company considered the question presented to it, and ordered that a map be made of the colony. This map was prepared and sent by Storm in 1750.

It shows no occupation west of the Essequibo, except the post at Moruka.

It was further decided by the Council of the Company (Sept. 6, 1747) that all the Chambers should investigate each by itself "whether it can be discovered how far the limits of the Company in Rio Essequibo do extend," and report to their respective Chambers what they found and discovered. The Commandeur

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was directed that "if in the meantime, he can *by indirect means and without himself appearing therein*, bring it about that the Spaniards be dislodged from the forts and dwellings which they have, as he maintains, made on the territory of the Company and be prevented from further extending themselves there, he shall be permitted to carry this out" (B. C. II, 51).

It appears from this reply of the Company that they were equally ignorant with the Commandeur as to any Dutch territory west of the Essequibo. Nor were they willing that he should assert any claim to such territory as against the Spanish, for they direct him, not to protest, not to write to the Spanish authorities not to attack the intruder, not to raise the question himself in any form, but "if he can by indirect means and without himself appearing therein, bring it about that the Spaniards be dislodged," he may do so.

Any territorial claim, therefore, made by Storm after 1747 in reference to the Spanish missions, is made not only without authority, but in contravention of the Company's orders.

On December 2, 1748, Storm wrote (B. C. II, 57) that "the Spaniards were beginning to gradually approach the Upper Cuyuni," and he added: "I wish however, that, if it were possible, I might know the proper boundaries."

A curious phase of the dispute which Storm, against the express instructions of the Company, attempted to create appears in a communication to the Company of September 8, 1749 (B. C. II, 63), in which he reported a correspondence with the Governor of Cumaná. As we have only Storm's version of what was said, it is difficult to know exactly what was the position of the two parties. Storm says:

"Having written to the Governor of Cumaná that, if he persisted in the design of founding a Mission in the River Cuyuni, I should be obliged to oppose myself there against effectually, he has replied to me that such was without his knowledge (not the founding of the new [Mission], but the site), and that it should not be progressed with, as in reality nothing has been done."

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Storm carefully refrains from saying that he asserted any territorial claim, and from enclosing either his letter or that of the Governor, from which the Company might have been informed exactly what had been done. No trace of these letters has been found. Storm represented to the Company that the Governor had said that the mission "should not be progressed with," but with the additional statement that "in reality nothing has been done." This would seem to imply that all the Governor had said was that he did not intend to build such a mission, and that, in fact, Storm had been misinformed. Whether he took any ground as to Spanish rights in the territory Storm fails to state, and as far as the evidence shows the correspondence raised no such question. The letter, however, was clearly a violation of the Company's orders given two years before.

Some years later, that is to say, on September 2, 1754 (B. C. II, 93), Storm had occasion to refer to this matter, and he admitted that the letter was contrary to the "command that I must try to hinder it, but without appearing therein." He said: "I did not agree in the reasons which have actuated your Honours to command this secretly;" but he justified himself on the ground that his letter had been written before the instructions were received, in which statement he was in error. He added that he took the statements of the Governor as "sterling coin," but that since then, instead of stopping the establishment of missions or moving them back, the Spanish authorities had founded two new settlements at a point lower down the Cuyuni valley.

This outcome of Storm's attempt at independent action shows that he never made any claim of territorial right. He never again addressed the Spanish authorities on the subject of their settlements, though he did not agree in the reasons that had actuated the Company; and it was this presumptuous desire of a subordinate to impose upon the Company his policy of territorial extension that was at the root of the whole difficulty. The Company did not believe that they had a claim, and acting on that be-

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lief refused to assert it. Storm tenaciously adhered to his purpose, however, and at last succeeded in getting the Company involved in a position from which they were only too glad subsequently to withdraw.

In a report presented personally by Storm at his visit to Holland in 1750 (B. C. II, 67), the Commandeur again called attention to the boundary, and said:

"It is necessary that the limits of the Company's territory should be known, in order successfully to oppose the continual approach of the neighbouring Spaniards, who, if they are not checked, will at last shut us in on all sides, and who, under pretext of establishing their missions, are fortifying themselves everywhere. And *because the limits are unknown, we dare not openly oppose them,* as might very easily be done by means of the Carib nation, their sworn enemies."

This is at least the fifth time that the question of boundaries had been brought up by the Company's principal agent at the colony and had remained unanswered by the Company. It remained unanswered because the Company knew that none of this territory had ever been acquired by the Netherlands, while their own charter limited their possessions to Essequibo and Pomeroon.

By report of the Committee of the Company July 27, 1750 (B. C. II, 68), it appears that the question of the boundary had been called to the attention of "His Highness," but apparently without result.

On September 8, 1750, the Acting Commandeur, who evidently had not grasped Storm's theory of rectification of frontiers, reported to the Company (B. C. II, 69), in reference to information that the Spanish had begun to construct a new mission "close by here," that he had carefully informed himself about it, and that in his opinion the last mission which was being constructed "is directly far outside the concern of this colony."

Even Storm's visit to Holland had not resulted in any adoption of his boundary theories, but he had no intention of dropping the subject. Two years after his return, having as yet received no

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answer, he sent, on September 2, 1754, his sixth appeal to the Company for information as to the boundary (B. C. II, 93):

"I have the honour to assure your Honours that I shall not slumber in this matter, but shall do everything in my power, and meanwhile await your Honours' orders, respecting the so long sought definition of frontier, so that I may go to work with certainty. (Has not this been regulated by the Treaty of Münster ?)"

It was in the same letter that he referred to the establishment of two new missions, notwithstanding his former letter to the Governor, and to the fact that he did not agree with the Company in their policy of non-interference.

The answer of the Company was finally given January 6, 1755 (B. C. II, 101). It was not an answer at all. After nine years of investigation and discussion, the Company acknowledge their inability to state any specific boundary, and fall back upon the terms of the charter. They say (B. C. II, 102):

" We would we were able to give you an exact and precise definition of the real limits of the river of Essequibo, such as you have several times asked of us; but we greatly doubt whether any precise and accurate definition can anywhere be found, save and except the general limits of the Company's territories stated in the preambles of the respective Charters granted to the West India Company at various times by the States-General, and except the description thereof which is found in the respective memorials drawn up, printed and published when the well-known differences arose concerning the exclusive navigation of the inhabitants of Zeeland to those parts, wherein it is defined as follows: ' That region lying between those two well-known great rivers, namely, on the one side, that far-stretching and wide-spreading river, the Amazon, and on the other side, the great and mightily-flowing river, the Orinoco, occupying an intermediate space of ten degrees of north latitude from the Equator, together with the islands adjacent thereto.' For neither in the Treaty of Munster, concerning which you gave us your own opinions, nor in any other is there to our knowledge anything to be found about this. The only thing we have discovered up to this time by our search is a definite boundary-line made in the West Indies between New Netherland and New England in the year 1650, but nothing more or further.

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"For which aforesaid reasons, it is therefore our opinion that one ought to proceed with all circumspection in defining the Company's territory, and in disputing about its jurisdiction, in case this may have led to the aforesaid preparations of the Spaniards, and that it would be best in all befitting and amicable ways to guard against all estrangements and hostile acts arising therefrom."

The above letter is conclusive evidence that in 1755 the West India Company did not claim any part of the territory now in dispute above the falls or west of Pomeroon. It begins by saying: "We would we were able to give you an exact and precise definition of the real limits," which plainly shows that they were unable to do so; and it adds that they "greatly doubt whether any precise and accurate definition can anywhere be found," excepting in the charters.

In this statement the Company were correct; and if they had only read the charter of 1674, they would at once have found what they were seeking, namely, the limits of the Dutch claim. This charter gave the Company two places on the continent of America, namely, Essequibo and Pomeroon. Whether the Dutch Government had a title that enabled it to make this grant may be a question, but that this was all that it granted is beyond question.

The Memorial from which the Zeeland Chamber, writing this letter, quotes a vague and grandiose phrase referring to a "region" lying between the Amazon and the Orinoco, and which it cites as the only indication of a boundary, was a memorial prepared by itself three years before, in 1751, in a dispute between the different Chambers of the Company. Such a statment made by one or the other of the contending parties in the Company, in a brief in support of rival pretensions could indicate nothing as to the limits of chartered rights; still less could it be used in an international controversy as a definition of specific frontiers, especially when the individuals who made it were the same as those who were now referring to it as the only suggestion they could find as to colonial limits. Such phrases could certainly never

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be the foundation of title and the Company evidently did not rely upon them as such.

The Company sagely observe in conclusion that the only thing which their search has discovered so far is a boundary line made between New Netherland and New England, "but nothing more or further." It would seem that there could not well be anything further from the question then under consideration.

Finally, in answer to Storm's intimation that he did not agree with them in abstaining from territorial claims, they made the significant statement:

> "For which aforesaid reasons, it is therefore our opinion that one ought to proceed circumspectly in defining the Company's territory and in disputing about its jurisdiction,"

and that it would be best to guard against all entanglements. Not only were the Company ignorant of any claim to extended territories, but they distinctly refused to make such a claim, and most solemnly enjoined upon their agent in the colony that he should do nothing to raise the question, an injunction that was all the more emphatic in view of the letter to which it was a reply.

The destruction by the Spaniards of the Dutch post at Quive-Kuru in 1758 led the Director to write a long and emphatic protest to the Spanish Governor (B. C. II, 154).

In examining this letter, it must be remembered that Storm was precluded from setting up any territorial claim, first, by the want of any foundation for such a claim, as was repeatedly admitted in his letters, and, secondly, by the express prohibition of the Company. All such claims are, therefore, carefully avoided in the letter. The Director-General expresses his surprise at the attack, at the imprisonment of the occupants of the post, and the destruction of the house. He refers to it as an offense "directly opposed to the law of nations, and to the Treaties of Peace and Alliance." He asks how such violence could be committed "without previously making a complaint." He dwells upon it as

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an unfriendly act and even an outrage. But he says no word to indicate that it was performed on Dutch territory, or that it was in breach of the territorial rights of Essequibo. The letter is in every word such a letter as might have been written had the acts complained of been committed on the other side of the Orinoco in the heart of Venezuelan territory; in fact, the absence of any reference to a violation of territorial rights as the gravamen of the offence is so studied and marked as virtually to amount to a disclaimer.

Storm's letter having been delivered by the Commandant of Guayana to Don Nicolas de Castro, Governor of Cumaná, under whose administrative supervision the province of Guayana at that time was placed, the latter replied to it in terms about which there was no ambiguity. The letter was as follows (B. C. II, 169-70):

"The Commandant of Guayana has forwarded to me, among other documents, a letter which you sent him claiming the two Dutch prisoners, a negro slave, and a half-breed woman with her children, whom the guard dispatched from that fort seized in an island of the River Cuyuni, established there in a house, and carrying on the unjust traffic of slavery among the Indians, in the dominions of the King my Sovereign. As this same River Cuyuni and all its territory is included in those dominions, it is incredible that their High Mightinesses the States-General should have authorized you to penetrate into those dominions, and still less to carry on a traffic in the persons of the Indians belonging to the settlements and territories of the Spaniards. I therefore consider myself justified in approving the conduct of this expedition."

Storm chose to consider himself affronted by De Castro's letter, because it was addressed "To the Dutch Commandant residing in Essequibo," and he conceived the idea of having the letter answered by the officer who commanded his little garrison. The answer begins (B. C. II, 173):

"I duly received the letter which was written to me by Mr. Don Nicolas de Castro, whose person or quality I do not have the honour to know, in answer to the letter which our Governor had written to you."

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This arrangement served two purposes: it enabled Storm to resent the supposed affront to himself, and also to evade the prohibition of the Company as to a territorial claim, by making it in the name of an irresponsible subordinate.

In this letter the act of the Spaniards is characterized as a "violation and insult done to the territory of his Sovereigns." It adds that

"Since it seems to him, according to the letter in question, that in Guayana and at Cumaná there is ignorance of the boundaries of the territory of His Catholic Majesty and those of the States-General according to the Treaties at present subsisting, he has ordered me to send you the inclosed map, on which you will be able to see them very distinctly."

The only comment to be made on this statement is that the ignorance of the Spaniards in reference to the boundary, however great it might be, could not exceed that of the Dutch themselves, as plainly admitted by the letters both of the Director-General and of the Company.

This letter was sent back unopened by the Spanish Commandant, the latter stating that he was "forbidden to enter into any correspondence concerning the matter of Cuyuni" (B. C. II, 175).

Storm reported the facts in two letters, one of September 9, 1758 (V. C. II, 125), the other undated, but written in the following year, 1759 (*Id.*, 129).

In the first of these letters he merely said that the claim that the post was on Spanish ground was "utterly and indisputably untrue," and referred to D'Anville's map as authority for the boundaries.

In his second letter he was more specific. He said:

"There not being the slightest difficulty or doubt concerning the ownership of this *branch** of Essequibo, most undoubtedly belonging, as it does, to the West India Company, this unexpected and unheard of act is a violation of all existing Treaties."

The position taken in the above letters must be looked at in the light of Storm's previous correspondence, which abundantly

* Erroneously translated *portion* in B. C., II, 172.

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shows that he was ignorant of any Dutch claim of right west of the Essequibo River and of any ground for such a claim. We have six letters, from 1746 to 1754, stating that he knew no boundaries. He suggests, however, that he has found them in D'Anville's map. Now, D'Anville's map (Br. Atlas, p. 16) is a map of the whole of South America, and a glance will show that the boundary therein traced is an arbitrary line, representing the mere speculation of the geographers. It was enough for Storm, however, and he adopted it and passed it on to the Company.

In his second letter he suggests the theory that the river belongs to the Company because it is a branch of the Essequibo. This which amounted to saying that because the Dutch were settled for a dozen miles along the Essequibo, their occupation was constructively extended to include an immense lateral territory, 300 miles in width, to within 20 miles of the banks of the Orinoco, a territory which at that moment was occupied by numerous Spanish settlements controlled and governed by the King of Spain; a territory, moreover, whose natural outlet and natural entrance were on the Spanish or western side and which the Dutch were precluded from settling, according to their own statement, by natural barriers (p.). So far as Storm is concerned, all this was mere matter of suggestion. Up to this time he had repeatedly affirmed his ignorance of any ground of right, and had declared that there was nothing in his possession upon which to base a territorial claim. His letters amount to a denial of any ground of claim. He does not base such a claim upon anything now. He merely suggests that a French geographer has laid down a boundary, and that the branches of the Essequibo are indisputably the Company's territory. The methods of "rectifying frontiers" are alike in all ages. Substitute "Schomburgk" for "D'Anville" and the sentence describes the process of reasoning which has led to the present "extreme British claim."

The West India Company were far from being satisfied. They wanted something as a ground of right, which as yet the

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Director-General had not furnished them. They therefore replied on May 31, 1759, asking (B. C. II., 174)—

"what grounds you might be able to give us to further support our right to the possession of the aforesaid Post—perhaps a declaration by the oldest inhabitants of the Colony could in this connection be handed in, which might be of service."

The reply of the Director-General to the Company's inquiry as to what he knew about the boundary shows, as do his previous letters, that he knew nothing. He justified his claim by the statement (Report of September 1, 1759, B. C. II, 180):

"That Cuyuni being one of the three arms which constitute this river, and your Lordships having had for very many years the coffee and indigo plantation there, also that the mining master, with his men, having worked on the Blue Mountain in that river without the least opposition, the possession of that river, as far, too, as this side of the Wayne, which is pretended to be the boundary line (although I think the latter ought to be extended as far as Barima), cannot be questioned in the least possible way, and your Lordships' right of ownership is indisputable, and beyond all doubt."

In reply to the Company's inquiry as to the location of the post, he stated that it "was situated about fifteen hours above the place where Cuyuni unites with Massaruni," and he adds:

"But this has little to do with the matter, even if the Post had been situated fifty hours further up, it was a matter which did not concern the Spaniards, and in the same way as they are masters upon their territory to do what pleases them, so your Lordships are also masters upon yours."

Here we get the real underlying idea of Storm's territorial claims. He is not concerning himself with any question of right or of title. The questions which he is considering are questions of expediency or convenience. His argument is: "The territory is ours because we want it." He says that the Waini is pretended to be the boundary line (by whom he does not say), but that he thinks the boundary "ought to be extended" as far as the Barima. It is an extension of boundaries on grounds of expediency to which Storm is looking, not to a definition of boundaries on grounds of right. The fact that the Dutch had plantations on the 12-mile

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stretch of the Cuyuni below the falls, and that for a few months a Dutchman had prospected for minerals in the Blue Mountains, near the same falls, did not constitute possession of a territory three hundred miles to the westward. Storm's real contention is not that the post was placed on Dutch territory, but that the establishment of the post made it Dutch territory. He says it was "fifteen hours" from Essequibo, but if it had been fifty hours it would have made no difference.

Before the receipt of this letter, and while its own inquiry for further information remained unanswered, the Company made their First Remonstrance (V. C. II, 133), that of 1759, to the States-General, and the States-General, through their Ambassador at Madrid, presented it to the Spanish Government (V. C. II, 135). The extent of the claim advanced in this Remonstrance is to the Essequibo and to "all the branches and tributaries which flow into it, and especially of the northernmost arm of that river, named Cuyuni." This the Company, in singular ignorance of the facts of history, bases on the ground of immemorial possession, though just before they had been searching for an old inhabitant to prove the possession. The Remonstrance is exceedingly cautious in its terms. It uses the most guarded and hesitating language. It nowhere states that the territory referred to, which includes the whole drainage basin of the Cuyuni, was Dutch territory or territory belonging to the Company. It only says that it has been "possessed from time immemorial" and that they "in virtue of that possession, have always considered the said river of Cuyuni as a domain of this State."

This is not a claim, but an exceedingly deferential expression of opinion.

Referring to the attack on the post, it complains of the outrage, appends De Castro's letter asserting that the post was "in the dominions of the King my Sovereign" (V. C. II, 324)—a statement, it may be remarked, very different from that which

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says that the Company having been in possession of the Cuyuni from time immemorial, "have always considered said river of Cuyuni as a domain of this State,"—and it asks that reparation may be made for the attack; that the Company may be reinstated in the quiet possession of the post, and that a proper delimitation between the Colony of Essequibo and the River Orinoco may be laid down by authority, so as to prevent any future dispute.

The same position is taken by the Ambassador in his written protest. He said (V. C. II, 135):

> "His masters have been from time immemorial in undisturbed possession of the River Essequibo, and *all the little rivers* which flow into it, and especially of the right arm of the said river, which flows northwards, and is called the Cuyuni; that, in virtue of the said possession, his masters have for a very long time considered the whole of the said river as a domain belonging to them,"

and that they have consequently erected a post, etc.

Here, again, the suggestion is not put forward in language which suggests a claim. It is rather an invitation to a discussion, especially in connection with the proposal for a delimitation. Spain, however, refused to discuss it. No answer was made to the Remonstrance, as it required none. The letter of the Governor of Cumaná declared that the Spanish dominion included the whole Cuyuni and its territory. This letter was expressly referred to in the communication of the Dutch Ambassador to the Spanish Government, and the latter were therefore apprised of the fact that the position taken by the Spanish authorities in Guayana had been communicated to the States-General. Spain had nothing to add to that statement.

Under these circumstances, the statement in the British Case (p. 54), upon which so much stress is laid, that "this claim the Spanish Government never denied and never rebutted," is evidently an error, and the statement in the Counter-Case (p. 102) that of "'assertion of sovereign rights' . . . by Spain in the territory now in dispute there was none," is equally an error.

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When the Dutch Government, in making its complaint, annexed to the complaint a complete answer from one of the highest officers in the Spanish-American colonies, nothing remained to be done by Spain. The Dutch had had their answer. They had had their denial. Nothing more was necessary unless Spain proposed to disavow the declarations of the Governor of Cumaná, which it certainly had no intention of doing.

Moreover, the claim was not pressed. It was never heard of again. In its original terms it had been not so much a claim as the expression, in very doubtful and halting terms, of an opinion on the part of the Company and of the States-General. The only ground of the opinion, namely, immemorial possession, was so marvelously wide of the truth as to the Cuyuni valley as hardly to be open to discussion, and the claim, if claim it was, was presently contradicted and withdrawn.

The Second Remonstrance was presented to the Spanish Government in 1769 (B. C. IV, 29), when complaint was made of a number of acts on the part of Spain, which will be considered later. It is desired here only to trace the relation between the two Remonstrances.

Nothing had been done at this time about the Remonstrance of 1759. Spain had paid no heed to it. There is no suggestion that it had ever been made the subject even of a conversation between the Dutch Ambassador and the Spanish Ministers. This in itself is enough, according to diplomatic usage, to show that the Remonstrance was not regarded by its makers as a serious claim.

But the Second Remonstrance goes further than mere silence as to the prior claim. It is an entire waiver and abandonment of the old cause of complaint. It does not pass it by in silence. It refers to it, but as a thing long since past and done with. Speaking of the new causes of complaint, it says that "the Remonstrants, especially after what had happened in 1759, had been extremely surprised to learn by a letter" from the Director-General certain facts, etc.

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Certainly, after this reference, nothing more needed to be said by Spain about "what had happened in 1759." The only remaining importance of the occurrences of 1759 was that they caused additional surprise in the Dutch at learning of something that had happened ten years later.

But the Second Remonstrance went further than this. It took up the territorial question. It alluded to "the establishment of two Spanish missions, occupied by a strong force, one not far above the Company's said Post in Cuyuni (apparently, however, on Spanish territory), and the other a little higher up on a creek which flows into the aforesaid Cuyuni River."

This is all that is said about these missions. No complaint is made of them. No suggestion is made that they are displeasing to the Dutch Government. They constitute a mere flourish in the document.

The extraordinary fact about the allusion, however, is: first, that it is made at all, as it is not made with a view to protest; and, secondly, that it is coupled with the statement that the lowest of the missions is "apparently, however, on Spanish territory."

This is a complete reversal of the previous position of the Company. The claim, if it was a claim, in the Remonstrance of 1759 was a claim to the tributaries of the Essequibo and especially the river of Cuyuni. Here it is distinctly admitted, and the admission is entirely gratuitous, that a point not far above the Company's post in Cuyuni is in Spanish territory, and that the establishment by the Spanish Government of a settlement there, as well as at a higher point on a tributary of the Cuyuni, is not a subject for complaint. There was no purpose in saying that the mission was on Spanish territory except to withdraw the claim which they had previously advanced to the Cuyuni. This claim they in terms abandoned. All that was left was a cloudy statement possibly implying a Dutch claim to the post, and to the territory in the rear of it. As this was the lowest post, and was but a

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short distance above the falls of Cuyuni, it conceded substantially all that had been made the subject of the First Remonstrance.

As is evident from the tone of the First Remonstrance, the Company, after sending it, were very far from being satisfied with the position in which their Director-General had involved them, and the remaining correspondence shows how they came to abandon their position.

On December 3, 1759 (B. C. II, 181), five months after the Remonstrance had been sent, they for the second time wrote to the Director, saying:

"We *still* request you to lay before us everything that might in any way be of service in proof of our right of ownership to, or possession of, the aforesaid river [Cuyuni]."

On May 2, 1760 (B. C. II, 184), the Director replied:

"I have very little to add to what I have already had the honour of submitting to your Lordships in several of my despatches [on the boundary question] and, although I am aware, as your Lordships are pleased to inform me, that no Treaties have been made which decided that the dividing boundary in South America should run inland in a direct line from the seacoast, . . . the rivers themselves, which have been in the possession of your Lordships for such a large number of years, and have been inhabited by subjects of the State without any or the least opposition on the part of the Spanish, are most certainly the property of your Lordships."

Storm's reiteration of this claim, when the Company so evidently questioned it, and asked for proofs of title, again shows that he was only suggesting to the Company the point where they ought to make their frontiers. Historical facts, questionsof discovery, title, occupation, political control, had no interest for him. Even the Company's modest suggestion that he should furnish declarations of the oldest inhabitants was treated with neglect. The only argument he could advance was that the Cuyuni was a branch of the Essequibo, and was indisputably company territory. This is the explanation of his persistent nagging of the Company about the Spanish missions, in which the Company never took

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any interest, and which, in Storm's absence, the Acting Commandeur, who evidently did not share Storm's theory of the rectification of territorial frontiers, intimated were matters with which the colony of Essequibo had nothing to do.

In 1764 Storm claimed he transmitted to the Company (B. C. III, 106) "a brief treatise concerning the Honourable Company's outposts." In this he mentioned (p. 109) the post which "was on the river of Cuyuni," and described its destruction by "the Spaniards of Guayana." He added (p. 110),

"that [the bend of] this river is a tract of land along which the Spaniards spread themselves from year to year, and gradually come closer by means of their missions, the small parties sent out by them coming close to the place where the Honourable Company's indigo plantation stood" [below the lowest fall], "and being certain to try and establish themselves if they are not stopped in time."

Later in the same letter he said (pp. 111–12):

"What can we expect from the numerous arrivals of settlers in Cayenne and the removal of Spanish people and plantations in Guayana *so much nearer to our boundaries?*"

Here is the Director-General of Essequibo, as late as 1764, referring to the movements of the Spaniards to the falls of the Cuyuni as a removal of Spanish people and plantations "so much nearer to our boundaries." There is no claim here that the Spaniards are encroaching upon Dutch territory. The claim made by Storm and the point which was really at the bottom of all his complaints and asseverations was that it was dangerous to have the Spaniards establishing themselves *near* the Dutch colony and occupying the Cuyuni. His last statement is an unconscious admission, that, in his opinion, the boundary really was at the falls of the Cuyuni, twelve miles from its mouth. The letter shows above all how preposterous was the claim of immemorial possession of the river.

In view of this last admission, it is no wonder that the Company in 1769 receded entirely from the territorial suggestions of 1759. The Second Remonstrance, at the later date, is the last ref-

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erence ever made by the Dutch authorities to a boundary in the interior west of the falls of the Cuyuni. As with the earlier Remonstrance, nothing further was heard of it.

II. Coast Territory.

As in the interior, so in the coast territory the question of boundaries was first actively pressed by Storm. Beekman, in 1683, had suggested to the Company to "take possession" of the Barima, but the Company had not approved the suggestion. Evidently at this time there was no immemorial or other possession of Barima by the Dutch. Except this proposition, which was a virtual disclaimer, and the allusion already cited (p.), in 1894, to the region "which lies under the dominion of the Spaniard, nothing more is heard of territorial rights in Barima until Storm's administration."

Storm applied his ideas on the subject of boundaries. Put in limitation to both the interior and the coast districts, but only in his correspondence with the Company. He thus alludes to the latter (V. C. II, 101) (1748):

"According to the talk of the old people and of the Indians, this jurisdiction should begin to the east at the creek Abary and extend westward as far as the river Barima, where in old times a post existed; *but this talk gives not the slightest certainty.*"

This is the first and original suggestion put forth by the Commandeur of Essequibo as the boundary of the colony on the coast. It originated in talk with "old people and Indians." Storm says that according to "this talk" the jurisdiction should extend as far as the Barima. He does not say that it does extend; in fact, his words imply the contrary. He states that according to "this talk" in old times a post existed there, but we know, from the documents that we have and which he had not, that this talk was unfounded. But he says himself that "this talk gives not the slightest certainty." Doubtless, it was for this reason that he omitted to obtain depositions composed of "this talk" for the

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Company when they asked for them in reference to Cuyuni. It is apparent that in 1748 Storm was entirely ignorant as to any boundaries or possessions of the Company in the coast territory beyond Moruca.

The next year an incident happened which is only touched upon in the Dutch correspondence, the loss of the "Baskensburg." This was a Dutch ship wrecked on the coast, between the Moruka and the Waini. In a letter of September 8, 1749 (V. C. II, 105), Storm referred to his having taken possession of the ship, and said that he sent the question over and "took advice on it from the foremost jurists in the province of Holland," and that he was astonished to find out from the opinion that was rendered that "I had for their sake risked my honor, reputation and property, inasmuch as this ship had been stranded at Pechy, and therefore on the territory of Spain, and I had had no right to touch it. Of this I had absolutely no thought, and it shall make me in the future somewhat more prudent."

The Bouchenroeder map (British Atlas, Map 35) shows the Gulf of Pechy on the sea-coast between the Waini and Moruka, and therefore far within the line to which Storm wished to "extend the boundary."

This opinion of "the foremost jurists in the province of Holland" is one or the most significent facts in this case in reference to the boundary of the coast territory. The opinion of Storm, an able Colonial administrator, but evidently unversed in the most elementary principles of jurisprudence, could not be of much value as to territorial claims, or as embodying principles of law. That of the Company's Directors, whose occupations were essentially mercantile, although their admissions had important effects, was not much better. But here we have an authority, unnamed, it is true, but nevertheless so characterized as to entitle it to the highest respect, consisting not of one man alone, but of several, whom Storm could designate as "the foremost jurists in the province of Holland," delivering a professional opinion,

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in 1749, on the legal aspects of the question of the boundary between the West India Company's territory and that of Spain on the coast of Guiana. This opinion is not lightly to be thrown aside by the Tribunal now considering the same question. The facts on which the opinion was based were those furnished by Storm himself, supplemented by the Treaty and the Charter. The statement of the opinion is so clear that if these very jurists were themselves here as witnesses, they could not make their conclusion clearer. A point is named between Moruka and Waini, and that point, in the opinion of the foremost jurists of Holland in the middle of the eighteenth century, was Spanish territory. In the face of this authority, what consideration is to be given to the ever-shifting claims of Storm and the Company? Their admissions of course bind them; but their claims are as naught beside the weight of this contemporaneous and authoritative professional opinion, from the standpoint of Dutch law.

In the contrite spirit shown by Storm over his mistake in the affair of the "Baskensburg," nothing can be seen of any territorial claim to Barima. There is no idea of a boundary even at the Waini, much less at the Barima or the Amakuru. The boundary in his mind at this time is the Moruka, and the ship is stranded on the territory of Spain, because it is stranded between Moruka and Waini.

It will be remembered that three years before this, in 1746, Storm had spoken of his ignorance of the boundaries in the interior; that he had repeatedly asked for instructions on the point, "regarding which no documents whatever are to be found in this office" (V. C. II, 98); that in 1755 the Company, after a nine years' investigation (V. C. II, 99), had been unable to discover any ground of territorial claim. Storm, thereupon, entered upon the same domain of speculation in reference to the coast. Notwithstanding the opinion of the jurists and the conclusion of the Company, he was still in doubt. He wrote, on September 1,

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1759, speaking of the Cuyuni River and the boundary in that quarter (V. C. II, 137):

"That river being so far on this side of Waini (which people claim to be the boundary, although I think it must be extended as far as Barima), the ownership thereof cannot be involved in the slightest question."

In 1759, therefore, according to Storm, "people claimed" the Waini to be the boundary. This is a considerable step beyond the Gulf of Pechy, which ten years before Storm had learned was Spanish territory, which fact was to make him more prudent in future. Nevertheless, he was not satisfied with it. He wanted the Barima, but did not suggest that there was any claim to the Barima. On the contrary, he admitted that there was none.

As far as tradition went, he thought that the boundary stopped at the Waini; but he said: "I think it must be *extended* as far as Barima," by which he meant that it was the policy of the Company to acquire that territory. A nation does not extend its boundary when it only claims the territory up to its established boundary. To extend the boundary is to acquire territory beyond the established boundary.

In this letter, Storm refers again to D'Anville's map as indicating the boundary. This map (Br. Atlas, map 16) is a map of the whole of South America, and was published in 1748. In 1760 D'Anville published a second map (Br. Atlas, map 23). As might be expected from its date and from its extent, it is exceedingly imperfect in details. It marks a boundary line somewhere between the rivers Waini and Barima (Amakuru, as he calls it). The entire course of both the Amakuru and the Barima is put on the Spanish side of the boundary. The position of the Waini is in doubt. The boundary, however, is placed onthe coast line well to the *east of the mouth of the Orinoco.* D'Anville's borrowing of the line from an earlier map has been already referred to (p.).

To this letter the Company replied December 3, 1759 (V. C. II,

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138–9), asking Storm to lay before them everything which might be of service in proof of ownership of the Cuyuni, and they added:

"We see from your letter that you make the boundary of the Colony toward the side of Orinoco to extend not only to Waini, but even as far as Barima. We should like to be informed of the grounds upon which you base this claim, and especially your inference that, Cuyuni being situate on this side of Waini, it must therefore necessarily belong to the Colony; for, so far as we know, there exist no conventions [to the effect] that the boundary lines in South America run in a straight line from the seacoast inland, as do most of the frontier lines of the English colonies in North America."

The Company had evidently been led to believe from its previous correspondence with Storm that the Waini was the boundary. Now they say he is making the boundary extend to Barima, and they wish to know the grounds. Grounds, however, were precisely what Storm was in no position to furnish. In his reply, May 2, 1760 (V. C. II, 140), he stated:

"The rivers themselves, which have been in the possession of your Lordships for such a large number of years, and have been inhabited by subjects of the State without any or the least opposition on the part of the Spanish, are most certainly the property of your Lordships."

He went on to say:

"I am strengthened in my view of this matter by the fact that Cajoeny is not a separate river like Weyne and Pouwaron (which last has been settled, and still contains the foundations of your Lordships' fortresses), but an actual part of the River Essequibo," etc.

The argument here is confined to the Cuyuni, but its negative application to the coast territory is most significant. It does not refer to Barima, and its allusion to Waini is directly against a claim of rights to that river. Cuyuni, Storm reasons, is Dutch, on the ground of possession and also it is a branch of the Essequibo. Pomeroon is a separate river, but it has been settled; therefore it is Dutch territory. But Waini, which is neither a banch of the Essequibo nor settled by Dutchmen, would seem to be entirely excluded.

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The question of the boundary in the coast territory could not, however, be settled in this manner. It was sure to come up, and that shortly. In 1760 Lieutenant Flores made his capture of boats in the Barima, and Storm, in reporting the fact, said (V. C. II, 142):

"They also took some canoes on this side of Barima, and thus within the Honorable Company's territory."

The Company replied in the next year, asking Storm (V. C. II, 143)

"the reasons why you deem that everything which has happened on this side of Barima must be deemed to have occurred on territory of the Company; in order that, when we shall have examined all this, we may take further resolution as to what it behooves us to do in this matter."

The answer of the Secretary in Essequibo, Spoors, dated August 5, 1761 (V. C. II, 144), is not very satisfactory. He said:

"In compliance with these your orders, I respectfully reply that the aforesaid boats, having been seized by those robbers between the rivers of Barima and Waini, were absolutely on the Company's coast, for this is certain (not to enter upon the various opinions which exist about the limits of the Company's domains) that the river of Waini indisputably belongs to the Company."

In this rather incoherent reasoning we have still another claim, and return for the moment to the Waini. But this letter was evidently sent in Storm's absence, for a week later, on August 12, he modified the claim, but in such a way as to reduce the subject to hopeless confusion. He said (V. C. II, 145):

"The latter having been captured this side of Barima I am of opinion that it was captured upon the Honourable Company's territory, for although there are no positive proofs to be found here, such has always been so considered by the oldest settlers, as also by all the free Indians. Amongst the latter I have spoken with some very old Caraibans, who told me that they remember the time when the Honourable Company had a Post in Barima, for the re-establishment of which they had often asked, in order that they might be relieved from the annoyance of the Surinama traders; and then, lastly, because the boundaries are always thus defined by foreigners, as may be seen on the map prepared by D'Anville, the Frenchman."

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In 1759 Storm was expressing the opinion that the boundary "must be extended as far as Barima." In 1761 he apparently has extended it to the Barima, "although there are no positive proofs." That makes no difference; in such a process proofs are superfluous. If proofs were needed, they are supplied by the fact that it "has always been so considered by the oldest settlers." Yet it was of "this talk" that Storm said, in 1748, that it "gives not the slightest certainty." Who the settlers were it is difficult to say. They certainly were not settlers in Barima, for there were no such settlers.

There remains the fact that "the boundaries are always thus defined by foreigners, as may be seen on the map prepared by D'Anville." But unfortunately in D'Anville's map, which we have in the British Atlas, the line is not on the Barima. The Barima is entirely included in Spanish territory. So is the Amakuru.

How little Storm knew about the geography of the Barima and how little he was qualified to pass on these questions may be inferred from a statement in his letter of August 27, 1772 (V. C. II, 219), which describes a map that a surveyor has just made for him, and in reference to which he remarked:

"What astonished me most, my lords, was to see in these exact plans the situation of the Post in Maroco; I could never have imagined that it lay so far up the creek from the sea-coast."

But this is not the last word from Storm about the boundary. Within three years after the letter last quoted, that is, in 1764, Storm wrote to the Governor of Surinam, which place was not included in the charter or under the control of the Dutch West India Company (V. C. II, 158), in reference to the Surinam rovers who were provided with passes by the Governor to go to Barima. He made the following extraordinary statement:

"At this opportunity, since I am speaking of this, I take the liberty to inform you, that your naming in those passes the river Barima causes complaints from the Spaniards, who, maintaining that that river is theirs,

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WHEREIN I BELIEVE THEY ARE RIGHT, have already sent some of these passes to the Court of Spain."

Upon this letter the British Case (p. 51) makes the following comments:

"But while claiming as Dutch all the territory up to the right bank of the Barima, the Director-General appears to have thought it inexpedient that the Dutch passes to traders should purport to include that river. In a copy of a letter, said to have been sent by him on the 18th of August, 1764, to the Governor of Surinam. the latter is requested not to name Barima in his passes, as that gave offense to the Spaniards."

The explanation by which the British Case, in the above cited passage, attempts to do away with the effect of Storm's conclusive statement, is that, while claiming the territory as Dutch, the Director-General thought it inexpedient that the Dutch passes should purport to include that river. But where was it that Storm was making any claim? He never suggested any claim to the Spaniards; on the contrary, when the Spaniards were, year in and year out, doing acts in the territory that showed exclusive control, neither Storm, nor the Company, nor the Government, ever raised a word of protest. In fact, Storm was expressly avoiding claims, and, as the very letter in question plainly shows, was endeavoring to convince the Spaniards that he was making none. Why is it that he asks the Governor of Surinam not to name the Barima in his passes? Because "your naming in those passes the river Barima causes complaints from the Spaniards, who, maintaining that that river is theirs, wherein I believe they are right, have already sent some of these passes to the Court of Spain." The whole object of his communication to the Governor of Surinam is to prevent any suggestion of a claim which the Spanish dispute.

The British Case goes on to say of Storm's letter:

"The writer adds that they "[the Spaniards]" maintained that that river was theirs, and expresses an opinion in their favor upon this point, which, in one view, might be said to be inconsistent with the claim of the Director-General to the territory up to the right bank."

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What is the "opinion expressed by the writer" here referred to? It is a frank and unqualified statement of his belief in the merits of the Spanish claim. And what are the words in which he utters it? "WHEREIN I BELIEVE THEY ARE RIGHT." It is certainly safe to say that, in one view, these words might be said to be inconsistent with the Dutch claim of territory to the Barima. It would be more correct to say that, in every view, they not only might be, but they are, in direct contradiction of any such Dutch claim; and being, as they are, a contemporaneous statement of the belief existing in the writer's own mind, they constitute an utter dismissal and rejection of all doubt or uncertainty as far as his personal views are concerned in a form than which none could be more forcible.

Neither the Company nor Storm had ever claimed Barima. In his correspondence he had advised the Company "to extend their boundary" to the Barima; and when the Company had asked him what grounds he had for the suggestion, he was unable to give any except a map, which was directly against his contention, the chance opinions of ancient Indians and colonists, and the mythical tradition of a Dutch post of which he had no record. Anything in the nature of sending a claim to the Spaniards he discouraged.

No doubt it was with the same feeling in mind that he wrote two years later, in 1766, to the Governor of Guayana, in reference to the Rosen matter (B. C. III, 131), that a party of Dutch colonists, the offscourings of the colony of Essequibo, were leading a lawless life in Barima and that he feared bloodshed and murder would come of it. To the Company he said:

"The west side of Barima being certainly Spanish territory (and that is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint; wherefore I think of proposing to the Governor . . . to carry this out hand-in-hand, or to permit me to do so, or as and in what manner he shall consider best."

Even in the above letter Storm does not say that the east side of Barima is Dutch territory. About the Spanish claim to the river

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he believed, as we know from his previous utterances, that the Spaniards were right. But he does say that there is no doubt that the west side is Spanish; and with the same idea of avoiding anything that might cause offence to the Spaniards, and expressly for that reason, he applied in the first instance to the Spanish Governor.

The history of this matter will be referred to later. Here we are only concerned with the claim. The occurrence led the Court of Policy to make an order "forbidding any one to stop in Barima," meaning thereby, of course, any Dutch colonist, as is shown by the instruction to the Postholder of Moruka to see that the order was carried out, "because in time this would become a den of thieves, and expose us to the danger of getting mixed up in a quarrel with our neighbours the Spaniards" (B. C. III, 132).

The Governor of Orinoco having intimated that he had no objection, Storm had brought the offenders into Essequibo. The Company's comment on his action is to be noticed, as frankly showing how entirely in the dark it was on the question of territorial claims. It said (B. C. III, 137):

"If that place is really Spanish territory, then you have acted very imprudently and irregularly; and, on the contrary, if that place forms part of the Colony, and you had previously been in error as to the territory, then you have done very well, and we must fully approve of your course, as also of the Court's Resolution that henceforth no one shall be at liberty to stay on the Barima."

Storm's reply is characteristic. He boldly asserts (B. C. III, 141):

"The east bank being in our jurisdiction, the Court can enforce its order there."

Apparently however he has some doubt about it, for he adds, as a second reason:

"Because I think that the Court certainly has the power to forbid its citizens and colonists to go to any places when such is considered to be inexpedient or dangerous for the Colony."

This is an excellent reason, but it negatives the idea of a territorial claim.

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It is idle, however, to try to thread the mazes of Storm's mind in reference to the boundary in the coast territory. His suggestions, from beginning to end, are a mass of contradictions, and it is hardly to be wondered at that the Company was involved in like contradictions itself.

Already, in 1764, Storm had taken another position on the boundary question, by which the whole subject was reduced to hopeless confusion. In that year the Director-General had published what purported to be a "Register of the Colony of Essequibo and Demerary" (V. C. II, 159). In this "Register," with that singular variableness which characterized the colonial utterances in reference to the boundary, the Colony was described as extending "from the creek Abari on the east to the River Amacura on the north." This is an entirely new suggestion, never made in Storm's reports to the Company, for in these the Amacura was never mentioned. It is the only suggestion made during the period of Dutch history by anybody, official or unofficial, that this particular river marked the extent of the Dutch territories. It of course has reference to the erroneous position of the Amakuru in D'Auville's map, although even in this map the boundary not go to that river.

The West India Company, however, took small account of the various suggestions as to the boundary, either on or beyond the Waini, or on or beyond the Barima, and least of all to the suggestion in the "Register" about the Amacura. It disposed of all of them in short order in its Memorial to the States-General, November 26, 1765 (V. C. II, 162), where it stated that

> Demerara "is situate between the two extremest trading places or posts in Essequibo, namely, the one, to the north, on the river Moruca, and the other, to the south, on the river Mahaicony, both of which rivers, as well as the others situate between, pertain to that Colony; which of course shows undeniably that Demerara is one and the same Colony with Essequibo."

This statement, of the territorial limits, occurs in an official communication from the Company to the Government of the

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Netherlands. There is no mistaking the meaning of these words, "the two extremest trading places or posts in Essequibo, namely, the one, to the north, on the river Moruca, and the other, to the south, on the river Mahaicony;" and still more the next phrase, "both of which rivers, as well as the others situate between, pertain to that Colony." In view of this statement alone, it is impossible for anybody to say that in 1765 the Dutch authorities were claiming anything for their territorial possessions beyond the post of Moruka.

This, however, does not prevent Storm from going on with his suggestions. The very last reference made by him to the boundary is an allusion, in September, 1768, to the capture of a salting vessel by the Spaniards (V. C. II, 177), "before the River Wayni (indisputably the company's territory)."

This occurrence was referred to in the Remonstrance (V. C. II, 200) to Spain in 1769 drawn up by the States-General, and it is spoken of as undertaking "to prevent the fishery upon the territory of the State itself, extending from the river Marowyn to beyond the river Waini, not far from the mouth of the river Orinoco, according to the existing maps thereof, particularly that of M. d'Anville."

This is the furthest territorial claim ever asserted by the West India Company in the coast territory. It is important not for what it claims, but for what it disclaims. It fixes the claim of boundary of the territory not at the Amakuru, not at the Barima, but "beyond the river Waini," a term which can only be understood to mean a claim of territory to both banks of the Waini. It is only a claim of coast line. It is contradicted by the Memorial of 1765, also presented to the States-General, naming the Moruka as the boundary. How far the claim was supported by acts of occupation will be considered in another place. Here it is only mentioned to show what the claim was, and what it was not.

Although from this time on the Spanish guard-boats and police authorities constantly patrolled the coast territory, fre-

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quently apprehending Dutchmen therein, no remonstrance was ever made again by the Director-General of the colony to the end of its history, or by the West India Company or the Dutch Government. No reference was ever made to the boundary which Storm had sought to establish, and the claim which never went beyond the Waini was never again heard of.

So completely was the claim abandoned that in 1794 the first Governor-General of Essequibo, after the final termination of the West India Company's charter, Sirtema van Grovestins, in reporting a voyage of exploration in the Pomeroon and neighboring districts, stated (V. C. II, 248):

"Went on as far as the Creek of Moruca, WHICH UP TO NOW HAS BEEN MAINTAINED TO BE THE BOUNDARY OF OUR TERRITORY WITH THAT OF SPAIN.

In 1808, according to the British Case (p. 63):

"Two Protectors of the Indians were appointed *for the Colony, which was divided into two districts for the purpose.*"

One of these districts was the Essequibo, with the rivers and creeks flowing into it. The other district was stated to be (B. C. V. 191):

"The west coast of the aforesaid Colony from the Creek Supename right up to the Spanish boundary, the River Pomeroon being included therein."

During all this period the Spanish claim was well known. That claim extended throughout the whole territory and as far as the Essequibo.

The boundary claimed by the Spanish authorities is shown more by their acts than by their words. They never had occasion to discuss the question for they were not only *de jure*, but *de facto* masters of Barima, as well as of the interior, and the Dutch never once disputed their innumerable acts of dominion on this territory, unless the reference to the fishing vessel captured "before the river Wayni" can be so considered. Nor did they ever find Esse-

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quibo Dutchmen settled in this territory, except in the case of Rosen, when Storm asked their consent to act, and in the case of La Riviere, when they expelled the intruders themselves. In the interior there never was the slightest semblance of a Dutch settlement.

During all this period the Spaniards exercised control in both districts. In the interior they destroyed the Dutch post and captured its occupants, and they patrolled the river to the falls of the Cuyuni, finally establishing a fort on its southern bank at the mouth of the Curumo. In the coast territory their coastguard vessels were constantly patrolling the rivers, and they frequently exercised jurisdiction over Dutchmen found in the territory.

Under these circumstances there was little call for the Spanish Government to express in terms their territorial claims. They had asserted them in the beginning of the century in reference to the horse trade, and they had been admitted. They had asserted them when Storm protested against the destruction of the post in Cuyuni, in Governor De Castro's letter stating that the post was "in the dominions of the King my Sovereign," and adding that "this same River Cuyuni and all its territory is included in those dominions."

When the colonist Pinet, whom Storm sent in 1748 to Orinoco on a mission of observation, addressed the Spanish Governor on the subject of his treatment of the Indians, the latter had replied "that the whole of America belonged to the King of Spain, and that he should do what suited himself, without troubling about us." These words are not so grandiose as they sound. Except for the territories which had been ceded, they claimed the original title to the whole of Guiana,—a title not only anterior in date to every other, but one which had been effectively enforced.

So also, when an emissary was sent to the Orinoco, in 1769, to recover fugitive slaves. The Governor bade him return with this message (V. C. II, 197):

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"That the land belonged to His Catholic Majesty as far as the bank of Oene, and that he would come and seize those plantations which lay on Spanish territory."

So when Don Matheo Beltran carried off a number of Indians from Moruka, in 1775, he said to the Postholder (V. C. II, 229):

"That his lord and master would shortly set a guard in the arm of the Weene called the Barmani, and that the whole of Maroekka belonged to the Spaniards."

The real and positive assertion, however, of the Spanish claims lies in the acts performed by the Spaniards in Barima, which will be described in subsequent chapters.

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CHAPTER XI.

THE LAW OF ADVERSE HOLDING.

Title to real property may be obtained by original acquisition, that is to say, by the occupation of unoccupied land to which no one had theretofore any claim of title.

As has been shown in an earlier chapter, the Spanish acquired by a perfected discovery an original and perfect title to the whole of Guiana.

After original acquisition, the next form of acquisition is where the property acquired had been the property of another before the acquisition, but where the person acquiring the property does not in any way base his ownership on the title of the former owner, or of any former owner, but acquires a title adversely to that of the former owner. This is known as acquisition of title by "prescription" or "adverse holding."

This mode of acquiring title is thus defined by F. de Martens (Int. Law, pp. 460-461):

"*b.*—Prescription (*usucapio*). Contrary to the principle of private law, international law admits the rule of prescription only in a very limited degree. A *résumé* of its importance is given in the following:

"1. International law does not recognize a limit to prescription, for a state is master of a territory so long as it is able and wishes to maintain its authority therein.

"2. In the domain of international relations nothing can interrupt the continuance of an ancient right. A government may in fact lose a possession, but it is always legal to attempt recovery of the same in one way or another.

"3. In international law no real importance is attached to anything but *immemorial antiquity* (*antiquitas, vetustas, cujus contraria memoria non existit*). This it is which forms the foundation of all jural relations, both for the existence of barbaric and civilized states. Length of time and the sanction of history impose silence on all claims and charges that might have been justified in the beginning by the violence and injustice committed at the time of gaining territory. In this sense it may especially be said of

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states: '*Beati possidentes!*' The accomplished fact covered by immemorial antiquity becomes legitimate in the age of international law."

The Dutch-English claim in the present case is not a claim of immemorial possession. It lacks this quality, which, as the learned author says, is the most essential ingredient of prsecriptive rights in international law. On the contrary, everything relating to the origin of the Dutch title is a matter of history. That title was acquired by cession from Spain, and the question here is whether, by the subsequent acts of the Dutch, territories not included in the cession could by prescription have been acquired from Spain. As the learned author intimates, such a mode of acquisition is favored by international law only to a limited degree, and the law does not recognize a limit of time.

It was in view of this principle of international law that it was necessary, in order to give effect to alleged acts of Dutch occupation, if any there were, that the limitation of fifty years was prescribed by the Treaty. It stated an exception to the general tendencies and spirit of international law. It was a concession to Great Britain. It provided that if Great Britain could prove an adverse possession, by the Dutch, for fifty years of some part of this terrritory beyond that which they had acquired by cession, such proof should be admitted as vesting a title in the Netherlands.

The question here, therefore, is not a question of present possession supported by immemorial antiquity, but a question whether at any time during the period of Dutch rule an adverse holding for fifty years by that nation can be shown in any part of the territory in dispute; in other words, what, if any, territory west of Essequibo, the Netherlands acquired subsequently by an adverse holding of fifty years.

Vattel, Book II, Ch. XI (Chitty's Transn., Phila., Ed. 1859), says, § 140 (p. 187):

"*Usucaption* is the acquisition of domain founded on a long possession, uninterrupted and undisputed—that is to say, an acquisition solely

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proved by this possession. Wolf defines it, an acquisition of domain founded on a presumed desertion. His definition explains the manner in which a long and peaceful possession may serve to establish the acquisition of domain. Modestinus, *Digest*, lib. 3, *de Usurp. et Usucap.*, says, in conformity to the principles of Roman law, that *usucaption* is the acquisition of domain by possession continued during a certain period prescribed by law. These three definitions are by no means incompatible with each other; and it is easy to reconcile them by setting aside what relates to the civil law in the last of the three. In the first of them we have endeavored clearly to express the idea commonly affixed to the term *usucaption*.

"*Prescription* is the exclusion of all the pretensions to a right—an exclusion founded on the length of time during which that right has been neglected, or, according to Wolf's definition, it is the loss of an inherent right by virtue of a presumed consent. This definition, too, is just; that is, it explains how a right may be forfeited by long neglect; and it agrees with the nominal definition we give to the term *prescription*, in which we confine ourselves to the meaning usually annexed to the word."

The claim of "prescription" or "adverse holding," meaning a naked holding or possession by which title may be acquired, adversely or in opposition to the holder of the prior title, as applied by the Treaty to the present controversy between two sovereign States, has been already discussed. It has been shown that it necessarily presupposes the prior title, as is admitted in the British Counter Case (page 114), as follows:

"But no question of adverse holding or prescription can arise except where one Power has occupied territory by right belonging to the other."

It has been further shown that in a case of adverse holding between States, the possession indicated must be a national possession. This is characteristic of all occupation upon which public title is based. Thus F. de Martens says (Int. Law, p. 463):

"From a subjective point of view, the occupation must necessarily be made in the name and with the assent of a government. If this is effected by officials representing a state, there is no doubt as to the nation which should be considered as the rightful proprietor of the occupied land. An occupation undertaken by individuals should be sanctioned by the government on whose behalf it has been accomplished."

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It has also been shown that, under the Treaty as well as under the general principles of law, nothing less can be held to indicate possession than an actual settlement, established by national authority and remaining under national control; and that, in this particular case, the Treaty has, further, authorized the Arbitrators to consider what, if any, effect shall be given to the exercise of an exclusive political control, if they find such control, lasting for a period of fifty years, but without actual settlement.

Apart from these conditions, however, as the term "adverse holding" or "adverse possession" is one of familiar use in modern jurisprudence, and has been made the subject of adjudications in English and American courts, certain well-recognized principles have been established to describe and define the conditions of adverse holding in general requisite to establish a title. These principles are inherent in the common acceptation of the term, and must be considered in ascertaining its meaning and its application in this arbitration, in addition to and in connection with the definitions stated in the Treaty.

According to Phillimore (International Law, 3rd edition, vol. I, p. 367), these are not only required in the case of an adverse holding by individuals under municipal law, but in the case of a prescriptive holding by States under international law. He says that the proofs of prescriptive possession are

". . . principally publicity, continued occupation, absence of interruption (*usurpatio*), aided no doubt generally, both morally and legally speaking, by the employment of labor and capital upon the possession by the new possessor during the period of the silence, or the passiveness (*inertia*), or the absence of any attempt to exercise proprietary rights, by the former possessor. The period of time, as has been repeatedly said, cannot be fixed by international law between nations as it may be by private law between individuals; it must depend upon variable and varying circumstances; but in all cases these proofs would be required."

He adds that it is only in cases where dereliction is capable of proof that "the new possessor may found his claim upon original occupation alone, without calling in the aid of prescription."

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In another place, speaking of possession, Phillimore says (Int. Law, 3rd edition, vol. I, p. 325):

"That person is properly said to possess a thing who both actually and corporally retains it, and who desires and intends at the same time to make it his own.

"That person who, having no such desire or intention, by mere corporal act retains a thing, is, only in a gross and inaccurate sense, said to possess it."

Again (p. 327), he says:

"As dominion is acquired by the combination of the two elements of *fact* and *intention*, so, by the dissolution of these elements, or by the *contrary* fact and *intention*, it may be lost or extinguished."

These requirements, as laid down by Phillimore for International Law, are based upon the Roman Law, and have likewise been adopted by the English Common Law for an adverse holding—requirements which are inherent in the meaning of the term as used and understood by the negotiators of the Treaty of Arbitration. These requirements will now be discussed in detail.

I. In establishing a Claim of Adverse Holding, the Burden of Proof is upon the Party setting up the Claim.

As a claim of adverse holding is admittedly and necessarily a claim to found a title, upon a state of facts, in opposition to that of the prior owner, which but for these facts would be conclusive and paramount, the burden of proof is upon the party setting up the claim. If there were no claim of adverse holding, this prior title would stand good against all the world. The attempt to dispute this title must be based upon a certain state of facts, amounting to adverse holding by the claimant, which the claimant is bound to prove. His claim is an admission of a prior title.

The burden is, therefore, in the present controversy, upon Great Britain, as the representative of the Dutch title, of showing that she, or those to whom she has succeeded in right, acquired title to the land in dispute by an adverse holding of fifty years, within the meaning of the Treaty and within the principles not in

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contravention of the Treaty which the law has laid down to govern the determination of such a claim.

Venezuela is not called upon to prove the absence of settlement or of political control on the part of the Dutch in the territory in question, but Great Britain is called upon to show such settlement or control affirmatively.

II. After Title has once been fully acquired, no Obligation rests upon its Holder, in order to maintain it, of showing a continuous succession of Affirmative Acts of Occupation.

On the other hand, the holder of the prior title, holding the property as owner by a right which, except for this claim of adverse holding, is good against all the world, is under no necessity of setting up or proving the continuance of actual occupation. His title is an established fact, and all the presumptions are in his favor. Whatever may be the conditions required to establish prescription, the holder of the original title is not affected by these requirements. He is not called upon to show either actual settlement or political control. Having established his prior title, all that is necessary to continue ownership is presumed in the holder of the title. There is no duty upon the holder of the title to wild land to settle upon his land in order to maintain his title, or even to enclose it, or to perform any act upon it or in reference to it of any kind whatever.

Still less is there any obligation upon States, in order to maintain their public title, once acquired, of sovereignty or dominion to territory, actually to people the territory, or to assert an active political control by the performance of specific acts, for which no occasion may arise. Even authors who admit the principle of voluntary dereliction insist that the abandonment must be shown by the most conclusive evidence. Such abandonment certainly cannot be shown by the absence of settlement, or by the absence of affirmative acts of jurisdiction. If it could, a large part of the

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territories held to-day by civilized States under unimpeachable titles would be considered as in a condition of abandonment, open to the first comer.

As was well said by the Court of Appeals of the State of New York:

"The settled principles of law require courts to consider the true owner as constructively in possession of the land to which he holds the title, unless they are in the actual hostile occupation of another under a claim of title; and this rule is still more imperative in the case of wild and uncultivated tracts or lands, which are not susceptible of actual occupation and cultivation."

Bliss v. *Johnson*, 94 New York Reports, 235, 242, (1883).

Applying these principles to the present controversy and beginning with the starting point of 1648, it has been shown that at that date Spain held a title to all the territory west of Essequibo. It matters not, therefore, as far as this controversy is concerned, whether during the one hundred and sixty-six years following the date of the treaty down to 1814, the date as of which these boundaries are to be ascertained, Spain actually maintained settlements, in the territory in dispute, or how much of it she settled, or whether she settled any of it. It matters not whether, during that period, she exercised affirmative control over a large or a small part of it, whether this was a political or non-political control, or in fact whether she performed upon it any acts of control at all. As we shall show from the evidence in this case, the Spanish actually exercised a complete and exclusive political control over the whole of this territory, and for more than a century after the Treaty the Dutch never questioned or disputed it, west of Moruca and the falls of Cuyuni; but this proof is not necessary to the maintenance of the Spanish title. The question here is not what the Spaniards did to assert their title to territory to which they had title any more than it is a question what the Russian Goverment does in Kamchatka to assert its title, or the English in the wilds of British Columbia. The fact that the title existed in Spain is enough, just as the fact that the title to the other territories mentioned

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exists in Russia or in Great Britain. The question is what was done in the territory in dispute by the Dutch adversely or in opposition to the Spanish title, to establish in them a new title as against the prior title of Spain, within the rules of the Treaty, and the principles of law governing prescription.

Nor is it necessary, even where adverse possession has been maintained, however fully and completely, during a part of the required time and then interrupted, for the original owner to do any act in order to resume his possession. The temporary disseisin cannot invalidate his title. It is simply as if it had not occurred, and his title revives in all its original force. This doctrine is firmly established by a decision of the Privy Council in England, in a comparatively recent case, *Agency Company* v. *Short* (1888) 13 Appeal Cases, 793, 798, Privy Council. The case arose in New South Wales. Here the adverse holder and those whom he succeeded in title failed to prove continuous possession for the whole of the statutory period. The Colonial Court held that as there was no evidence that the legal owner during the statutory period retook possession, the statute when set running continued to run, notwithstanding the fact that there was a break in the chain of adverse possessors. This decision was reversed by the Privy Council, on appeal, and it was held by the highest Court in Great Britain, that the abandonment of possession by the intruders left the rightful owner in all respects as he was before the intrusion took place. The Court said:

"Their Lordships are unable to concur in this view [the view of the Colonial Court]. They are of opinion that if a person enters upon the land of another and holds possession for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. There is no one against whom he can bring an action. He cannot make an entry upon himself. There is no positive enactment, nor is there any principle of law which requires him to do any act, to issue any notice, or to perform any ceremony in order to rehabilitate himself. No new departure is necessary."

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Applying the principle, thus laid down by the highest judicial authority in Great Britain, to the present case, it appears that even if the Dutch had entered into possession at some point and the possession came to an end before the period of fifty years had elapsed, the original holder of the title immediately resumed possession and his title revived in all its original vigor. It was not necessary for Spain, under such circumstances, to do any act which should indicate such resumption. Mere discontinuance of possession before the expiration of the fifty years, supposing that there had been possession by the Netherlands during a part of that time, left the Spanish title in all respects as it was before the intrusion took place. Thus, where a so-called "post in Cuyuni," that of Quive-Kuru, was maintained from 1755 to 1758 and broken up at the latter date, assuming that the "post" fulfilled in other respects the conditions of adverse holding, which, however, is denied, its discontinuance served as an interruption of the adverse holding, and any consequences that flowed from such holding came to an end. The Spanish title revived when it ceased.

So with the second of the so-called "posts in Cuyuni," which was established in 1765, and abandoned in consequence of a threatened attack. So with the third "post," at which the bylier who had been driven from the post above, finally took refuge, and which, after dragging out a feeble existence for two or three years, was finally and entirely abandoned in 1772. It was unnecessary that any act should be performed by Spain in order to resume her original and paramount title. If adverse holding had in any sense begun to run through the temporary sojourn of these Dutch trading-employees, it ceased to run when the post was abandoned, and so far as this ephemeral occupation was concerned, the Spanish title was in no way affected. It revived as of course upon abandonment.

In the case of the first of these posts, that of Quive Kuru, the case was not even one of voluntary abandonment, as the Dutch

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were captured and the post was destroyed by the force under Captain Bonalde, sent for that purpose by the Spanish Commandant. Supposing that Spanish possession had been interrupted by the post (which is denied), there was a forcible resumption of possession on the part of Spain, constituting a most emphatic reassertion of the Spanish title and of Spanish jurisdiction. But in neither case, under this decision of the Privy Council, can that title be held to have been affected by the so-called "posts in Cuyuni," and they may be absolutely thrown out of consideration in this inquiry.

III. Adverse Holding must be evidenced by actual Possession and Control.

The object of adverse holding, in law, being to establish a title by possession, in opposition to a prior title, the law looks closely at the evidence of possession and exacts that the facts which are advanced to sustain it shall be such as amount to actual possession and control. These may be considered in two aspects, as to

(1) Extent of possession.

(2) Character of possession.

(1) *Extent of Possession.*

In reference to the extent of territory to which title may be asserted by adverse holding, it is a general principle of law that only such extent of territory may be thus acquired as is actually possessed. A party who relies on adverse possession must, in the language of Chief Justice (afterwards Chancellor) Kent, show a "substantial inclosure, an actual occupancy, a *pedis possessio*, which is definite, positive and notorious, to constitute an adverse possession, when that is the only defence, and is to countervail a legal title" (*Jackson* v. *Shoonmaker*, 2 Johnson (N. Y.), 230, 234 (1807).

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The only extension of this rule that is admitted by law in the case of private individuals is where the adverse holder, entering under a deed which, though as a deed it may in itself be worthless, defines the bounds of his territory, takes actual possession only of a part of the territory included in the deed, yet is held to be in constructive possession of the whole. The reason for this extension of the rule is plain. As the adverse holder takes his possession, such as it is, under a paper title which defines larger boundaries, the taking of possession is to be considered in connection with the boundaries of the deed, and he is presumed to take possession of the whole which is included in the paper title under which he took actual possession of a part; in other words, he is presumed to enter according to his title, and his deed is notice to all the world that the possession which he has taken is, by implication, a possession of that which was defined by metes and bounds therein. He is then said to be in actual possession of a part and, by reason of the boundaries stated in the deed, to be in possession of the whole.

Says Mr. Justice Woodworth:

"When a party claims to hold, adversely, a lot of land, by proving actual occupancy of a part only, his claim must be under a deed or paper title. This distinction has been uniformly recognized, and acted upon in this Court."

Jackson v. *Woodruff* (1823), 1 Cowen's Reports (New York), 276, 285.

No such claim of constructive possession can be made in the present case. The Dutch, whatever rights they may have had, never had a title, worthless or otherwise, to which any limits other than those of actual occupation could be assigned. If, therefore, they acquired actual possession in any part, which is not admitted, this is no ground for allowing a constructive possession to any other part. What they take by adverse holding is that which they actually occupy; that of which they have an actual *pedis possessio*.

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Such is the doctrine fully recognized by English as well as by American courts. Says Lord Justice Bramwell:

"It is difficult to say that there is a *de facto* possession, when there is no possession except of those parts of lane which are in actual possession, and there is an interference with the enjoyment of the parts which are not in actual possession My meaning is this, if there were an inclosed field and a man turned his cattle into it, and locked the gate, he might well claim to have a *de facto* possession of the whole field; but if there were an uninclosed common of a mile in length, and he turned one horse on one end of the common, he could not be said to have a *de facto* possession of the whole length of the common. If it would not be a *de facto* possession it would be a nominal possession. If no right were attached to it" (meaning no definition of boundaries by paper title), "it would not be a constructive possession. That I look upon as being the condition of things, and consequently the plaintiff had not a *de facto* possession beyond the spots where his animals were grazing."

Coverdale v. *Charlton* (1878), Law Reports 4, Queen's Bench Division, 104, 118.

If there were any such thing as constructive Dutch possession in the present case, there is no possibility of assigning any limits to it.

Spain as the discover and first occupier of Guiana entered under defined bounds, upon a part for the whole. Her settlements had reference to those bounds. The Dutch entered under no claim or charter defining any limits.

Says Chief Justice Parker:

"But no presumption of a claim, and of color of title beyond the actual occupation could arise respecting other lots than that of which the party was in possession. And where the possession was in a township, or other large tract of land, which had never been divided into lots for settlement, no particular claim, beyond the actual occupation, would be indicated, and of course no notice of any such claim of title should be presumed."

Bailey v. *Carleton* (1841), 12 New Hampshire Reports, 9, 16, 17.

Says Mr. Justice McLean:

"The plaintiff in error contends, that as the lessors of the plaintiff have shown no paper title emanating from the Government, they must be considered as trespassers; and that their right is strictly limited to the *pedis*

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possessio of the occupants under whom they claim. That a mere trespasser cannot set up the right of a riparian proprietor unless his enclosures are extended so as to include the alluvial formation. . . .

"The position assumed by the plaintiff's counsel, that a mere intruder is limited to his actual possession; and that the rights of a riparian proprietor do not attach to him, is correct. He can have no rights beyond his possession. The doctrines of the common law on this subject have been taken substantially from the civil law.

Watkins v. *Holman* (1842), 16 Peters' U. S. Sup. C. Rep., 25, 54, 55.

Even if the Dutch had entered under a title to which definite constructive limits would otherwise have attached, these constructive effects could not operate in the disputed territory, because Spain had already a good actual and constructive possession.

Says Woodworth, Justice:

"Thus, if A takes a lease or conveyance for a lot of sixty-three acres, and improves a part, his possession is valid for the whole lot; not on the ground of having title; which draws the possession after it; until an actual adverse possession commences; but on the ground of a claim of title to the whole; and a possession of a part, which constitutes a good adverse possession. When a valid possession is acquired in the latter mode, it cannot be defeated by a subsequent entry on the same lot, making an improvement of a part; and obtaining title to the whole. The effect of such subsequent entry would be; to give the person so entering a possession of the part actually occupied and improved; but no farther. A constructive possession to the unimproved part of the lot, would remain in him who made the first entry under claim of title and improved a part."

Jackson v. *Vermilyea* (1827), 6 Cowen's Reports (New York), 677, 680.

Moreover, constructive possession cannot be inferred even from possession under a deed with metes and bounds, where the acts of the claimant are not such as to indicate an intention to occupy up to the boundaries of his deed, and still more where they are such as to actually negative such an intention. As was well said by Chief Justice Parker, of New Hampshire:

"If the occupation is not of a character to indicate a claim which may be coextensive with the limits of the deed, then the principle that the party

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is presumed to enter adversely according to his title, has no sound application, and the adverse possession may be limited to the actual occupation."

Bailey v. *Carleton* (1841), 12 New Hampshire Reports, 9, 16.

In the case at bar, the facts indisputably show that, even if they could have done so, the Dutch never entered with any view to the limits now claimed. The correspondence alone which has been recited is enough to show this; but besides the correspondence, there are scattered through the evidence a multitude of acts, which will be noted in their proper place, indicating that the Dutch never on any occasion intended to hold any territory west of Moruca or west of the falls of Cuyuni.

(2) *Character of Possession.*

The possession must be actual, not only as to the extent of the territory covered, but as to the character of the possession itself. The person claiming to hold adversely must claim and exercise control as an owner. Many acts may be performed upon the territory of another, especially wild and uncultivated territory, which do not imply any claim of title. To constitute adverse holding, the acts must be such as would amount to a disseisin of the true owner.

The Case of Great Britain contains, both in the text of the Case itself, and in the voluminous appendices, reference to a great many acts which were performed by the Dutch on the territory in dispute, and which are put forward as evidence of possession. These include principally the transit of Dutchmen over the territory, the trading of the Dutch with Spaniards and with Indians therein, the maintenance of an outlier in the Cuyuni for trading purposes, and the maintenance of relations with the Indian tribes, principally for the purpose of obtaining slaves by the capture of Indians of other tribes and for the purpose of inciting the Indians to attacks upon the Spaniards.

It is claimed that these acts in some way or other constitute or indicate possession of the soil. As a matter of fact, they indicate

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neither settlement nor control, nor occupation nor territorial sovereignty, nor even claim of sovereignty. Most of them are acts which even in civilized countries anybody may perform without any territorial significance whatever. All of them are acts which foreigners are frequently permitted to do even in a comparatively civilized country as well as natives, and still more when the country is wild and unsettled.

The most extravagant of these claims is that transit over a territory, especially such a territory as this, constitutes possession. Thus, it is stated in the British Case (p. 14) that the Dutch, at a very early period, had "penetrated far into the interior;" that "negro traders were employed by the Company to travel among the Indians and obtain by barter the products of the country;" and that "in 1683 and onwards these traders are mentioned as periodically visiting the Pariacot Savannah."

Suppose that they did all this, what conclusion is to be drawn from it? Does this constitute—we do not say "actual settlement" or "political control," as prescribed by the Treaty—but does it constitute possession in any sense? The fact that an individual subject of one country "penetrates" the wilderness on the frontier of another does not give his country any rights of possession, even though he be an agent of the Government. That may be done in civilized countries, and much more so in territory which is as yet unsettled.

So also with trade and the maintenance of trading establishments. Trading cannot form the basis of adverse holding so as to create a territorial title. Neither can the maintenance of trading establishments, which the citizens of one State are constantly maintaining on the territory of other States, nor the appointment of agents to conduct such a trade, have any such effect.

The relations of the Dutch with the Indians, which will be treated further on, were inspired by the necessity which is imposed on every colony of keeping on friendly terms with the savage neighbors on its frontier. It is true that the Dutch promoted wars be-

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tween these savages and other savages, whom when taken prisoners by the first, they could purchase as slaves. It is true that while the Dutch never attacked the Spanish themselves, they secretly conspired with the Indians and incited the latter to attack them, and particularly the Spanish missions. Nevertheless, these do not constitute acts of ownership performed upon the foreign territory. As far as acquisition of property or dominion in that State is concerned, they have no significance.

So of alliances and understandings with Indians, and even grants by Indians—though of these last it is not pretended that any existed. Such acts on the part of natives can confer no territorial rights. Says Westlake (Int. Law, p. 144):

"We have seen that natives in the rudimentary condition supposed have no rights under international law. . . . Hence, it follows that no document in which such natives are made to cede sovereignty over any territory can be exhibited as an international title. . . . A stream cannot rise higher than its source, and the right to establish the full system of civilized government, which in these cases is the essence of sovereignty, cannot be based on the consent of those who at the utmost know but a few of the needs which such a government is intended to meet."

IV. Adverse holding must be exclusive.

Under the well-recognized principles of the English common law, an adverse holding, to be valid, must amount to a disseisin of the true owner. The term "disseisin" is thus defined by Coke upon Littleton (153*b*):

"A disseisin is where one enters, intending to usurp the possession and to oust another of his freehold."

Says Chief Justice Hosmer:

"By adverse possession is meant a possession hostile to the title of another; or, in other words, a disseisin of the premises; and by a disseisin is understood an unwarrantable entry, putting the true owner out of his seisin."

French v. *Pearce*, 8 Connecticut Reports, 439, 442 (1831), citing Coke upon Littleton, 153*b*, 181.

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In order to sustain a claim of adverse possession, it is necessary that the true owner should be ousted; in other words, that the possession should be exercised in exclusion of the true owner.

If the two parties are settled in the territory, though in different settlements, the adverse holder can claim only the part occupied by his own settlements. As a matter of fact, the only place outside of the Essequibo plantations where Dutch settlement was in any degree exclusive, or even where there was any settlement, was in Pomeroon, and this existed only for a short time.

Any act or acts upon which a claim of an adverse holding is based must have the element of exclusiveness.

Thus, the miscellaneous classes of acts so much dwelt upon in the British Case, upon which comment has already been made, namely, transit, trade, relations with the Indians, capture of runaways, etc.—if these acts are brought forward by Great Britain, to sustain a claim of adverse holding, they must meet the test of exclusiveness. It is not enough to show that the Dutch performed these acts; it must also be shown that the Dutch excluded their performance by the Spanish. Insignificant as they are in any aspect, they may here be thrown out upon this point alone, that they were not exclusive. It is shown again and again in the evidence that all this disputed territory was not only as free to the Spaniards as to the Dutch, but that it was much freer; for while the Dutch never excluded the Spaniards, the Spaniards did on numerous occasions exclude the Dutch. The Dutch themselves testify that Spanish traders were all through this territory; that Spaniards came down to the falls of the Cuyuni as a habitual practice; (B. C., II, p. 68) that the trade in the Barima between the Orinoco and Moruca was largely conducted by Spaniards; that the Spaniards drove out the settlers on the La Riviere plantation, in Barima, and confiscated their goods; that the Spaniards arrested Dutchmen on the lower Orinoco and in Barima; that Spaniards patrolled the interior and the coast rivers; that the Spaniards had

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alliances and understandings with the Indians, and that they drove other Indians away repeatedly, and on other occasions brought them in to their settlements, where thousands of them were governed, instructed and civilized; and finally that so far from these acts being performed by the Dutch to the exclusion of the Spaniards, the Dutch were frequently excluded by the Spaniards from the performance of them.

There is not a single instance in the record where the Dutch questioned the right of the Spaniards to do any of these things.

But if two parties may be said to be in possession of land at the same time, he is held to be the true owner who has the better title. Where they are in possession of different parts of the land, the party having the better title is held to be in constructive possession of all that is not actually possessed by the other.

As was well said by Chief Justice Marshall:

"The defendant also relies on an adversary possession in himself and those under whom he claims, for more than twenty years. His proof of this fact is sufficient; and it is well settled, both in the courts of Kentucky and in this court, that a possession which will bar an ejectment, is also a bar in equity. But in this case the plaintiffs also have been in possession. . . . Each of the parties then has held possession of distinct parts of the land in controversy. In this state of things, it is well settled that the party having the better right is in constructive possession of all the land not occupied in fact by his adversary. If then the plaintiffs in this case have the better title, that title is barred by the possession of the defendant, so far as that possession was actual, but not farther."

Hunt v. *Wickliffe* (1829), 2 Peters' [U. S. Sup. Ct.] Reports, 201, 211, 212.

So also Mr. Justice Story:

"Where two persons are in possession of land at the same time, under different titles, the law adjudges him to have the seisin of the estate who has the better title. Both cannot be seized, and, therefore, the seisin follows the title . . . The disseisin of Coburn under a junior title did not extend beyond the limits of his actual occupancy."

Barr v. *Gratz* (1819), 4 Wheaton's [U. S. Sup. Ct.] Reports, 213, 223.

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V. The Claim of Adverse Holding must be Definite.

Courts of justice universally and absolutely refuse to consider loose and vague claims to indefinite areas as a foundation for adverse holding.

Thus the Supreme Court of New York:

"Adverse possession must be marked by definite boundaries and be regularly continued down to render it availing."

Doe v. *Campbell*, 10 Johnson's Reports, 477.

Says Mr. Justice Spencer:

"In order to bar the recovery of a plaintiff who has title, by a possession in the defendant, . . . it is also requisite that such possession should be marked by definite boundaries."

Brandt v. *Ogden* (1806), 1 Johnson's New York Reports, 156, 158.

Says Woodworth, Justice:

Boundaries, therefore, including the premises were indispensable in order to give this defense the semblance of plausibility. The defendants stand on the same ground as if no deed had been produced; and then the possession cannot extend beyond the place actually occupied."

Jackson v. *Woodruff*, 1 Cowen's Reports, 276 (A. D. 1823).

See also *Coverdale* v. *Charlton* (1878), 4 Q. B. Div., 104, per Bramwell, *L. J.*, and *Bailey* v. *Carleton*, 12 New Hampshire Reports, 9 (A. D. 1841).

It is therefore well settled that the claim of title, which is the necessary accompaniment of adverse holding, must be to a territory which has fixed and definite boundaries. When the boundaries are not fixed by grant they are fixed by the limits of actual occupation. There was not even a semblance of occupation by the Dutch west of the Moruca and the falls of Cuyuni.

It is one of the most singular facts in the present case that, while it is claimed that a title has been established in the Dutch and their successors, the British, by an adverse holding established prior to 1814, there is not in the whole history of the disputed territory, (at least up to 1839,) and of the Dutch colony which adjoined

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it and of the Spanish colony which, as Venezuela claims, included it, nor in that of the two countries to which these two colonies respectively belonged, as set forth in the vast mass of evidence annexed to the Cases presented by the respective parties, any definition of the boundaries of the territory claimed by the Dutch. During the one hundred and sixty-six years that this situation had lasted, from the date of the Treaty of Munster, the Dutch never undertook to state the limits of their claim. Not until 1840, after the Dutch had long disappeared from the territory and after the British had been in possession for nearly thirty years, was any definition made of the boundaries which are the present subject of claim, and the line put forward at this late date, nearly two centuries after the Treaty of Munster, was a pure figment of the imagination, assumed by the caprice of the person employed to make a survey, and without reference in fact to any question of settlement, or political control, or possession, or occupation of any kind whatever. This recent invention of the geographer Schomburgk is the only line that is talked about in the British Case, except indeed that still more recent invention, known as the "Extreme British Claim." There is no statement or suggestion in that Case, or in the Counter-Case, as to what the boundaries of fifty years' adverse possession are. There is, of course, no statement that there had been fifty years' possession up to the Schomburgk line, for such a statement would be entirely destitute of foundation. We are left still in absolute ignorance as to what territory is claimed by an adverse holding.

Of course, the Dutch never knew or imagined any such line as that which now appears as the Schomburgk line, or even that which was published by the British authorities as the Schomburgk line from 1840 to 1886. Even in those innumerable discussions and suggestions between the Company and Director-General Storm recited in the last chapter there was nothing that approached anywhere near this line. At various times, in the coast territory, these suggestions name the Moruca, the Waini,

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the Barima and the line of D'Anville, which excluded the Barima and which was entirely on this side of the mouth of the Orinoco. In the interior territory no point or points were ever suggested as a boundary. One may read the whole of the Company's correspondence from beginning to end, with the map lying before him, and yet be absolutely unable to make a line anywhere on that map that shows the boundary between the two territories as the Director-General or the Company at any time thought either that it was or that it ought to be. It is not only the variety of his suggestions, but their vagueness, which is to be noticed. He never speaks of a line except the line in D'Anville's map, and he evidently only speaks of that line because he finds it in the map. Except for its presence in the map it represents nothing. Moreover, he no sooner refers to it, than he makes a suggestion inconsistent with it. The boundary claim, so far as it was Dutch, therefore, fails in this most essential particular, that its extent was never definitely ascertained.

VI. Adverse Holding must be under a Claim of Right.

The mere possession of the land of another for twenty years is not enough to give title. A person coming upon the land of another and taking possession of it is a mere trespasser, and his trespass, though continued for the length of time prescribed by the statute, will not give him a title unless his possession is in pursuance of a claim to the ownership of the land.

According to Phillimore (Int. Law, 3rd ed., vol. I, p. 327):

"Dominion is acquired by the combination of the two elements of fact and intention."

The intent must be to exclude the true owner. A transient entry upon land for a temporary purpose can never amount to an ouster of the true owner. In such case, there is no intent to hold the land.

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Says Mr. Justice Story, of the Supreme Court of the United States:

"An ouster or disseisin is not indeed to be presumed from the mere fact of sole possession; but it may be proved by such possession, accompanied with a notorious claim of an exclusive right."

Ricard v. *Williams*, 7 Wheaton's [U. S Sup. Ct.] Reports, 59, 121.

Says Mr. Justice Baldwin, of the same Court:

"An entry by one man on the land of another, is an ouster of the legal possession arising from the title or not, *according to the intention with which it is done;* if made under claim and color of right, it is an ouster; otherwise, it is a mere trespass; in legal language, *the intention guides the entry, and fixes its character.*"

Ewing v. *Burnet*, 11 Peters' [U. S. Sup. Ct.] Reports, 41, 52.

In a later case in the same court, Mr. Justice Miller says:

"We think this law is too well settled to need argument to sustain it. There must be title somewhere to all land in this country. Either in the Government, or in some one deriving title from the Government, State or National. Any one in possession, *with no claim to the land whatever must in presumption of law be in possession in amity* with and in *subservience to that title.* Where there is no claim of right, the possession cannot be adverse to the true title."

Harvey v. *Tyler*, 2 Wallace's [U. S. Sup. Ct.] Reports, 328, 349.

If there is no claim of right, there can be no adverse possession. Under such circumstances, it is in law deemed to be a possession under the true owner. This principle has been well expressed by Chief Justice Beck, of Iowa. He says:

"An essential ingredient of adverse possession is a *claim of right* hostile to the true owner. So, if one enter upon the land of another, without any color of title or claim of right, the possession thus acquired is not adverse, but the possessor will be deemed by the law to hold under the legal owner. In such a case no length of possession will make it adverse. . . .

"The *quo animo* in which the possession was taken and held is the test of its adverse character. The inquiry, therefore, as to the intention of the possessor, is essential in order to determine the nature of his possession, and

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before his possession may be pronounced adverse it must be found that he intended to hold in hostility to the true owner."

Grube v. *Wells* (1871), 34 Iowa Reports, 148, 149.

Of course a holding by consent cannot be in hostility to the true owner, but the possession must be in subservience to the true title.

Says Mr. Justice Wells:

"A mere possession of land of itself does not necessarily imply a claim of right. The tenant may hold in subjection to the lawful owner, not intending to deny his right or to assert a dominion over the fee. But the terms open, notorious, adverse and exclusive, when applied to the mode in which one holds lands, must be understood as indicating a claim of right. They constitute an appropriate definition of a disseizin, and the acts which they describe will have that effect if not controlled or explained by other testimony.

"An adverse possession entirely excludes the idea of a holding by consent."

Winthrop v. *Benson* (1850), 31 Maine Reports, 381, 384.

The general principles requiring a claim of right in order to make adverse holding as between individuals apply with still greater force where the question is one as between States. In the case of individuals, the question is only of private title or ownership; in the case of States, the question is one of public title, dominion or sovereignty.

A private individual entering upon the land of another cannot establish a claim of adverse holding unless both the ouster and the possession are under a claim of right. Nor can a State endeavoring to acquire a title by adverse holding establish it unless both the ouster and the possession are likewise made under a claim of right.

In the case of private holdings, the act of the private holder sometimes speaks for itself, and may be enough without anything else to give notice of a claim of right; but in the case of States, where public title is concerned, the acts of private individuals on the territory which is sought to be held adversely show nothing

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with reference to the State of which they are subjects; no presumption can arise from anything they do as to the claim of the State. The fact that a squatter, or any number of squatters, establish themselves upon the territory of another State does not indicate a claim of right sufficient to establish even a private title; much less does it indicate a claim on the part of the State to which they belong to assert a public title. The State itself must take some action in reference to the territory so claimed. Unless it does so by exclusive acts of dominion necessarily implying a claim of right, the occupation cannot be deemed to have been made under such a claim; and no matter how long it continues, it is void and ineffectual as establishing a public title adversely to the prior sovereign.

Nor is it enough that the State seeking to acquire title through the acts of its citizens should extend its jurisdiction merely over such citizens, because jurisdiction may be personal in its character, and may follow the citizen wherever he goes. The jurisdiction which the adverse State maintains must be distinctly a territorial jurisdiction, one which implies dominion or claim of dominion over the soil and all who dwell thereon, whether its own subjects, or natives of the territory, or foreigners sojourning there.

If the acts performed by the Dutch on this territory had been much more strongly indicative of possession than they were, they would not, in the absence of a claim of right, amount to a disseisin of Spain. As has been several times suggested, there is nothing in these acts to indicate possession. There was no settlement and there was no control in the territory in question. If there had been, they might possibly have been of such a character as, in the absence of evidence to the contrary, to have implied a claim of right, because such a claim may be inferred from the facts, if the facts sufficiently warrant it. But there being no settlement and no control, the British Case is compelled to fall back upon acts of such slight significance as trading, the establishment of relations with the Indians, hunt-

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ing, fishing, transit, the capture of runaway slaves, and the like. Such acts can never be said to indicate a claim of right, because they are perfectly consistent with ownership in another. They have no territorial quality. The supervision which the Dutch authorities exercised over them was merely a supervision to secure the profits of the trade, or to control the movements of the "free colonists," or to insure the colony against Indian attack. There is not one of them that constitutes in any sense an act of territorial jurisdiction, whether it was performed by colonists or by the old negro traders or by the Outliers or Outrunners employed by the Company. They are void of significance in this inquiry, for the reason, if for no other, that they import no claim of territorial sovereignty, and therefore no claim of right.

In the present case, not only do the acts related fall short of implying any claim, but there is a mass of evidence of the most significant character which absolutely negatives the existence of such a claim.

The history of the deliberations of the West India Company on the boundary question has already been dwelt upon at length. It is enough to say here that it shows repeated applications on the part of the Director-General of the colony to the Company for instructions as to the boundary which he was to claim. It shows that these applications took the form of earnest appeals, urgently demanding an answer. It shows that the request for instructions was based on a critical condition of affairs in the colony, namely, the fact that the Spanish authorities were actively enlarging their actual settlement of the territory in which the Dutch had been travelling and trading to the Orinoco and in which dwelt the Indians who carried on the slave trade and otherwise contributed to promote the interests of the traders of Essequibo. It shows that the Director-General looked with the gravest apprehension upon the erection of new Spanish settlements in the territory, chiefly, no doubt, because it would reduce the facilities and profits

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of the trade there maintained. It shows, finally, that the Director-General desired to check this development of Spanish settlement in the territory by setting up a claim to dominion over it, or over some part of it, but that he required the authority of the Company to do so, and he also required information as to what territory, if any, the Company claimed.

What did the Company do under these circumstances? As to the location of the boundary, they refused to give any instructions whatever. They stated the result of their nine years' deliberations and investigations in a letter which showed that they were without result. They stated in terms that they were unable to form an opinion upon the subject, and they calmly referred to the boundary question between New Netherland and New England as the only fact in the history of the New World bearing on the subject.

It would seem to be impossible to conceive of a territorial claim where the party interested in making it was so entirely in the dark as to what he was claiming. If the West India Company never could determine what territory they should claim, they cannot be said to have made a claim, because the idea of a claim to territory by one who does not know what territory he is claiming is a contradiction in terms. Yet the fact is quite certain from these letters that whatever territorial extension the Director-General may have thought the interests of the Company demanded, he never was able to reach any conclusion as to the territory which should be claimed. Certainly he had no knowledge of the limits; nor, as appears from the letters of the Company, were they ever able to inform him. Moreover, the correspondence itself plainly shows that there was no claim of right, and no intention to claim as of right. The Director-General's suggestions were not in the direction of claiming on grounds of right, but of claiming upon grounds of expediency, in other words, of simple territorial extension; and the Company, while they would have been willing to claim anything for which they could have found a basis

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of right, being unable to find such a basis, refused to assert any claim.

But they did more than this. Having stated that they could come to no conclusion on the question of boundary claim, they expressly enjoined upon the Director-General that he should not raise the question, and should make no open or direct opposition to the extension of the Spanish settlements. The Company had received his hint, ingeniously conveyed, in his letter of December 7, 1746 (B. C., II, p. 46), that the Indians were much aggrieved at the Spanish settlements, since they closed the slave traffic in that direction, and that they expressed a desire to surprise the one last established and level it to the ground, "which I, not without trouble, have prevented." They had received a further hint from him, in his letter of March 25, 1747 (B. C., II, p. 49): "I should already long ago have removed and demolished the first fort up in Cuyuni (*which even now is easy of accomplishment on my part through the Caribs*), if I were but rightly conscious how far the limits of your Honours' territory extend," and they had answered, in the following September (B. C., II, p. 51), that they had started the inquiry about the boundary, adding this remarkable instruction, which has a double significance, in view of the letters that preceded it: "Nevertheless, if in the meantime you can, *by indirect means, and without yourself appearing therein*, bring it about that the Spaniards be dislodged from the forts and buildings which, *according to your assertions*, they have made upon the territory of the Company, and can prevent them from spreading further in that quarter, you will do well to accomplish this,"—an instruction whose meaning is evident, and which Storm showed that he understood, by his statement in the following year (B. C., II, p. 58) that "I intend to tell the Chiefs of the Indians, when they come to me, that I can provide no redress for them and that they must take measures for their own security. Then I feel assured that in a short time no Spaniard will be visible any more above in Cuyuni."

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The Director-General fully understood why the Company were unwilling to make any claim, and why, instead of openly opposing the extension of Spanish settlements, they covertly aimed at their destruction by means of the Indians. In his report in 1750 (B. C., II, p. 67), he says: "Because the limits are unknown, we dare not openly oppose them."

Finally, the Company, in their remarkable letter of January 6, 1755 (B. C., II, p. 101), which sums up the boundary question, and explains why they cannot reach a conclusion, warned the Director-General against attempting to define the Company's territory and disputing about its jurisdiction, for the very reason that the Company cannot find any ground for asserting a territorial claim.

Mindful of these instructions, the Director-General, when in 1758 he wrote his protest to the Spanish Governor in reference to the capture of the Cuyuni post (B. C., II, p. 154), carefully refrained from suggesting that any question of territorial jurisdiction was involved in the attack, and left it entirely as an unwarranted molestation of the persons of Dutch subjects. The only allusion to territorial rights which he allowed was in the letter of his irresponsible subordinate, which was returned unopened.

Under these circumstances, it is evident not only that the Dutch made no claim of right, but that they intended to make no claim, and that they expressly instructed their Managing Agent to make no claim, with which instruction he complied; and their reason for doing this was the best of all possible reasons, namely, that they had investigated the subject and that they could not find that they had any claim at all.

The evidence upon which these facts rest is incontrovertible. It is the best evidence that could possibly be had, namely, the very instructions, with the reasons for them, which the Company gave to the Director-General on the spot. After the most careful investigation, extending over nine years, they failed utterly to reach a conclusion. As admissions, the letters of Storm and of the Company are conclusive. As evidence of what was in the minds

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of the parties,—of that "intention" of which the judicial authorities speak in connection with adverse holding,—they are likewise conclusive; for they lay bare the inner workings of the minds of those who conducted the Company's affairs, and in such a way as to forbid any idea of intention to claim any particular limits.

It would be impossible to find a more absolute negation of all claim of right than is to be seen in this correspondence between the West India Company and the Director-General. But there were other facts which negative a claim of right. There was the express admission of Beekman, in connection with the horse trade, at the beginning of the century, that the territory up in Cuyuni, that is to say, beyond the falls, was Spanish territory, and his submission and acquiescence when such a right was asserted by prohibitions against Dutch trade. There was the suggestion made by Storm in 1766 to the Spanish Governor that the latter should deal with the Dutch outlaws in Barima. There was the entire absence of any exercise of jurisdiction or control by the Dutch over the territory west of Moruca and above the falls of the Cuyuni, and entire acquiescence, without a word of protest, in the assertion of Spanish jurisdiction by innumerable acts in the same territory. These matters belong more particularly to the discussion of the question of political control. They are only mentioned here as proof of the absence of a claim of right.

On two occasions, and two only, did the Dutch undertake to make anything resembling a claim. These were in the two Remonstrances of 1759 and 1769, already considered in the chapter on the Dutch Claim. The first of these was so expressed that it could hardly be considered a claim at all. It was confined to saying that the tributaries of the Essequibo had been "possessed from time immemorial," and that the Company "in virtue of that possession have always considered the said river of Cuyuni as a domain of this state." It protested against the attack on the Postholder and the destruction of the post; but such a

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protest might have been made, had the post been situated on the other side of the Orinoco; for the protest was not inconsistent with the admission of Spanish sovereignty over the territory. Finally, it invited a discussion to bring about a delimitation of frontiers. Such a statement as this cannot be said to be a claim of right. In considering its force and effect in the present controversy, we must read it in connection with the correspondence of the Company and their officers which lay behind it, and we must interpret it in the light of this correspondence. Viewed in this light, it is clear that the Company were unwilling to make a positive claim, because, first, they felt that they had no ground of claim, and, secondly, if they had a ground they could not tell to what territory it extended. They therefore sent their paper for what it was worth, and the paper was well called a "Remonstrance," for it was nothing more. Such as it was, however, it was withdrawn ten years later.

The Company had hoped, when they made their first Remonstrance, that they might shortly discover some facts that would justify a claim, and it was in this hope that they had invited a discussion of the boundary question, and had written repeated letters to the Director-General asking for further information. This further information they had never been able to get, and when the occasion arose for them to "remonstrate" a second time about fugitive slaves and other matters, they referred to Spanish settlements which they understood were placed in the Cuyuni, and referred to them solely for the purpose of disclaiming any territorial rights in that neighborhood; as a result of which the only effect of the second Remonstrance on territorial claims in the Cuyuni was that it admitted the Spanish claim to the Cuyuni Valley in general and denied the Company's previous position that "they had always considered the said river of Cuyuni as a domain of the state." This left the matter substantially as if no claim had ever been made.

They did, however, make a specific claim in the second Re-

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monstrance to territory of the State "extending from the river Marowyn to beyond the river Waini."

This is the only intelligible claim ever made by the Dutch Government or by the West India Company. It may, of course, be assumed to state the full limit of the claim, and thus included only the left bank of the Waini.

With the exception of this claim to Waini—and the important fact is to be noticed that this is only a claim *along the coast* to the mouth of the Waini--there is nothing to indicate a claim of right on the part of the Dutch to the territory in dispute, and there is everything to indicate the contrary. It is even a question whether, in view of the conflicting suggestions put forth in the correspondence, any importance can be attached to the claim to the Waini. This claim, however, was likewise abandoned, as appears from the often-quoted statement of Governor-General Van Grovestins in 1794—and it cannot be quoted too often—in which he names the Moruka as the line (V. C. II, 248) "which up to now has been maintained to be the boundary of our territory with that of Spain."

Two incidental points are to be noticed in connection with the requirement of a claim of right. These relate (1) to the time of making the claim, and (2) to the extent of the claim.

(1.) *The time of making the claim.*

The claim of right must be contemporaneous with the adverse holding. If it begins without a claim of right, it is not an adverse holding, and a subsequent claim of right will not refer back to the beginning of the possession. Nor can prescription run after the claim is actually or by implication withdrawn.

Adverse holding can only begin with an ouster or disseisin accompanied by a claim of right. If there is no claim of right at the time of the first entry, the entry is no ouster, and he who so enters holds, in contemplation of law, in subservience to the legal title. It follows that one may be in possession for any number of

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years, but such a possession is not an adverse possession until a claim of right is set up, and the duration of the possession anterior to the setting up of the claim is immaterial. This doctrine has been repeatedly affirmed.

Says Mr. Justice Spencer:

"In order to bar the recovery of a plaintiff who has title, by a possession in the defendant, strict proof has always been required, not only that *the first possession was taken under a claim* hostile to the real owner, but that such hostility has existed on the part of the succeeding tenants."

Brandt v. *Ogden* (1806), 1 Johnson's New York Reports, 156, 158.

Says Mr. Justice Baldwin, in a case already cited:

"It suffices for this purpose" (adverse possession) "that visible and notorious acts of ownership are exercised over the premises in controversy for twenty-one years, *after an entry under claim and color of title.*"

Ewing v. *Burnet* (1837), 11 Peters' [U. S. Sup. Ct.] Reports 41–52.

We have seen from our examination of the Dutch remonstrances that their alleged claims, which could only be construed as relating to portions of the territory now claimed by Great Britain, were made in such qualified terms that they could hardly be considered as claims at all; that, such as they were, they were in great part withdrawn; that the Dutch never made any entry thereunder; and that of the territory which it is alleged they claimed they had no possession.

We have seen further that the acts and papers of the Dutch during the 110 or 120 years before these Remonstrances expressly admitted Spanish dominion in the Cuyuni and in Barima.

It may be worth while to notice in this connection that no claim of right was ever made by the English until long after their acquisition of British Guiana. Even after the Schomburgk line had been laid down, the British Government in 1841 expressly disclaimed it as a line of right, and it was not until later that there could be said to have been any such claim in existence.

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(2.) *The extent of the claim.*

Not only must a claim of right be contemporaneous with the entry in order to constitute an ouster, but it must be co-extensive with the entry. An entry upon a tract of land, where there is a claim of right only to a part of the tract, even though there may be actual possession of the whole, constitutes an ouster or disseisin only of that part, and consequently an adverse possession only of that part. The adverse holding cannot be larger than the claim of right. A holding that is less than the claim is limited to the holding; a holding that is greater than the claim is limited to the claim. Possession outside of the limits of the claim is not adverse possession.

Says Chief Justice Parker, in a case already cited:

"And where the possession was in a township, or other large tract of land, which had never been divided into lots for settlement, no particular claim, beyond the actual occupation would be indicated, and of course no notice of any such claim of title should be presumed."

Bailey v. *Carleton* (1841), 12 New Hampshire Reports, 9, 16.

Says Mr. Justice Story, also in a case cited above, referring to the claim of a life tenant:

"His title being evidenced only by possession, it must be limited in its extent to the claim which he asserted."

Ricard v. *Williams* (1822), 7 Wheaton's [U. S. Sup. Ct.] Reports, 59, 111.

Applying this principle to the present case, it establishes that no matter what acts of occupation the Dutch may have performed in the territory in question, the effect of these acts as constituting an adverse possession is restricted to that portion of the territory to which they made a claim of right. Whatever may have been the character of their possession, to make an adverse holding it must be included within the limits of their claim.

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VII. Adverse Holding must be Continuous and Uninterrupted.

The term of adverse holding necessary to give title being fixed by the Treaty at fifty years, the general principle requiring continuity of possession must be applied to this period. No principle is better established than that such possession, in order to give title, must be continuous. A possession for a few years, interrupted either by forcible dispossession or by voluntary abandonment, although resumed at intervals, is not such a possession as the law requires to give title to an adverse holder. The holding must continue during the whole period, without a break. If it is broken, the holding comes to an end, and the existence of new conditions at a later period, which amount to adverse holding, cannot be deemed a continuance of the first holding, but must be considered by themselves as beginning a new period of fifty years, which, in order to be effective, must also be continuous.

In *Agency Co.* v. *Short* (1888), 13 Appeal Cases, 793, 798, 799, (Privy Council), previously cited as to another principle, the plaintiff sought to recover land in Botany Bay, New South Wales. The defendant set up an adverse possession for the statutory period, but failed to prove that he and the persons through whom he claimed had been in continuous possession during that period. It was held by the Supreme Court of New South Wales, that there being no evidence that the legal owner during the statutory period retook possession, the statute when set running continued to run, notwithstanding the fact that there was a break in the chain of adverse possessors. Upon appeal to the Privy Council, it was held that the abandonment of possession by the trespassers left the rightful owner in the same position in all respects as he was before the intrusion took place. Lord Macnaghten, delivering the judgment of the Privy Council, and referring to the decision of the Colonial Court, said:

"Their Lordships are unable to concur in this view. They are of opinion that if a person enters upon the land of another and holds pos-

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session for a time, and then, without having acquired title under the statute, abandons possession, the rightful owner, on the abandonment, is in the same position in all respects as he was before the intrusion took place. . . . The possession of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner or any secret process at work for the possible benefit in time to come of some casual interloper or lucky vagrant.

"There is not, in their Lordships' opinion, any analogy between the case supposed and the case of successive disabilities mentioned in the statute. There the statute 'continues to run' because there is a person in possession in whose favor it is running.

The effect is the same whether the possession is terminated by a voluntary abandonment, or by a forcible dispossession. If the possession depends upon settlement and the settlement is abandoned, the adverse holding, in so far as it is based on that settlement, comes to an end. A new settlement will not continue it.

It may or may not be the beginning of a new adverse holding, according to whether or not it fulfills the conditions of adverse holding; but the adverse holding based on the previous settlement is determined forever. The occasional existence, therefore, during a long period—two hundred years, for example—of settlements lasting a short time, when there are long intervals of abandonment during the period, count for nothing unless some one of the settlements shows a continuous existence during the whole period of fifty years.

A fortiori, the adverse holding is terminated by a forcible dispossession by the former owner. There is no more effectual mode of putting an end to adverse possession on the part of a State than by forcibly ousting the intruder. It is not only a cessation of the possession, but it is notice at the same time, and that of the clearest kind, that the claim, if any, is not only disputed, but is to be resisted by all means at the disposal of the sovereign.

Applying these principles to the present case, it is found that the settlements or other establishments relied on to prove adverse holding were from time to time totally abandoned. Such was

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the case with the first Pomeroon colony in 1665, after an existence of seven years; the second Pomeroon colony in 1689, after an existence of three years, and the second and third posts in Cuyuni, each of which lasted three years. The destruction of the first post in 1758 was a forcible dispossession by the holder of the prior sovereignty. Each of these brought to an end the running of the 50-year rule, as to that particular establishment, and each required a new act of settlement, in order to begin adverse holding again.

The same rule holds good as to political control. Political control is by the Treaty made, with certain reservations, a possible foundation for adverse holding; but the political control must be continuous for fifty years. A fitful control, exercised spasmodically and capriciously from time to time, with long intervals of apparent abandonment of control, cannot be deemed to be sufficient under the Treaty.

Whatever the Dutch did that had a shadow of resemblance to political control in the disputed territory they did in this spasmodic way. There was no such thing as a systematic administration of any district. There was no such thing as a continuous control of any district. Of political control in the real meaning of the word there was none whatever. Even the acts upon which the British Case relies to prove some sort of control, and especially those relating to the Indians, had about them no element of continuity.

VIII. Adverse Holding must be Open and Notorious.

The theory upon which an adverse holding is allowed to make title is that if the true owner, knowing the fact of the entry upon and adverse possession of his land, nevertheless sleeps upon his title and allows the encroachment to go unchecked for a long period of time, he shall be held to have forfeited his rights. But in order that such a principle may apply, the adverse possession must be of such a character that the owner is chargeable with

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actual or constructive knowledge of the possession, and of the claim under which it is taken. A silent and secret taking of possession, in the case of individuals, cannot create an adverse title. Much more is this true in the case of States; above all, in territories such as those now in dispute, which were in considerable part a trackless wilderness, where the opportunity for secret and obscure acts by individuals in remote and unfrequented localities was exceptionally great.

So, too, with the claim of right. It is not only the facts which are alleged to constitute possession that must be notorious, but the claim must also be notorious. It must be brought to the knowledge of the prior holder, actually or constructively, not only that the adverse holder has possession, but that he has possession under a claim of right.

No principle of the law of adverse holding is more clearly recognized than this, and notoriety is one of the most necessary elements of any definition or the term. Thus, the definition of Chief Justice Kent, already quoted, is:

"A real and substantial inclosure, an actual occupancy, a *possessio pedis*, which is definite, positive and notorious."

Jackson v. *Shoonmaker*, 2 Johnson's New York Reports, 230, 234 (1807).

So also says the United States Supreme Court, by Mr. Justice Baldwin:

"It suffices for this purpose, that visible and notorious acts of ownership are exercised over the premises in controversy, for twenty-one years, after an entry under claim and color of title."

Ewing v. *Burnet* (1837), 11 Peters' [U. S. Sup. Ct.] Reports, 41, 52.

Says Mr. Justice Story:

"An ouster, or disseisin, is not, indeed, to be presumed from the mere fact of sole possession; but it may be proved by such possession, accompanied with a notorious claim of an exclusive right."

Ricard v. *Williams* (1822), 7 Wheaton's [U. S. Sup. Ct.] Reports. 59, 121.

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See also Chief Justice Parker:

"There should be something more than the deed itself, and a mere entry under it—something from which a presumption of actual notice may reasonably arise. It is not necessary to show actual knowledge of the deed. Acts of ownership, raising a reasonable presumption that the owner, with knowledge of them, must have understood that there was a claim of title, may be held to be constructive notice."

Bailey v. *Carleton* (1841), 12 New Hampshire Reports, 9, 16.

Applying this principle to the present case, it is admitted that many of the acts which are adduced in the British Case to indicate possession on the part of the Dutch were of sufficient notoriety. The fact that Dutch colonists and traders passed over the territory, for example, and that they passed over it for purposes of trade, was doubtless well known, for the reason, if for no other, that a large part of this trade was carried on by or with the Spaniards themselves, who, in like manner and to an equal extent, frequented the territory for the same purpose; in fact, much of the trade which is spoken of was a direct trade between the Spaniards and the Dutch themselves, and the fact has been noted that, especially during the seventeenth century, comprising the largest part of the period, the trade between the two colonies, particularly in Barima, was almost wholly carried on by the Spaniards, who came to the Dutch post and settlement, and but little by the Dutch going to the Orinoco. It was the distinct and avowed policy of the authorities of Essequibo to have the trade proceed in this way. The question of trade, however, is wholly unimportant, because there is no possible way in which it can be made the foundation of adverse holding, for it fulfills none of the requirements of adverse holding.

As for the other acts upon which the claim is made, there is no evidence that any of these had the notoriety which the law requires to establish adverse holding. So as to the two or three instances referred to of alleged cutting of timber, although no timber was cut. So with the prospecting of Hildebrandt in the Blue Mountains, of which some mention is made. Nothing of

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importance was ever discovered there, and it was, for that reason, abandoned by the Company. The Spaniards never knew that it had been carried on.

As to the maintenance of "posts," so-called, there was no post west of the line connecting the falls of the Cuyuni, in the Interior, with Moruka, on the Coast, which the Spaniards did not break up as soon as its existence became known. We know with what rapidity and thoroughness they acted upon the report of Fray Benito as to the post at Quive-Kuru; and as to the second, the Spaniards were preparing to attack it when the post was moved, and as to the third, there is no evidence that the Spaniards were even aware of its existence. If they were, its pretensions were so slight and its activities so feeble and harmless that it might well have been left, as it was, to the natural death which was its fate after three years of precarious existence.

Finally, in reference to the relations with the Indians. Apart from all the other considerations excluding these relations from the question of adverse holding, they entirely lack the element of notoriety. They were carried on by secret intrigues and conspiracies. The most pronounced effect of them in this controversy, namely, the attacks upon Spanish missions, which the Dutch instigated, were of so secret and sinister a character that the Company, even in its correspondence with the Director, referred to them with guarded indirectness of speech, but in phrases beneath which lay an unmistakable meaning. The Director hinted that he could bring about an attack. The Company adopted the hint, and hinted back that he should do it, but cautioned him that it must be done covertly and secretly. "If you can," says their extraordinary letter of September 9, 1749 (B. C. II, 51), "by indirect means and without yourself appearing therein, bring it about that the Spaniards be dislodged from the forts and buildings . . . you will do well to accomplish this." And the burning of the missions and the murder of the missionaries followed in due course. Certainly these acts, however else they may be charac-

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terized, purposely and actively shunned that notoriety which is required to establish adverse holding.

The process, of acquiring prescriptive rights by stealth is precisely what the law forbids, and it is to prevent this that it exacts that adverse holding shall be under a notorious claim. It is the laches of the owner that justifies the rule by which a wrongful possession may grow into a title; but the owner is not chargeable with laches unless he has notice that the possession is held under a claim, and he has no such notice where the acts by which the possession is sought to be established are not inconsistent with the ownership of another, or where the adverse claimant studiously refrains from advancing his claim and is silent where he ought to speak.

Before dismissing this subject it may be well to contrast the Spanish claim and their method of enforcing it with that which the Dutch Company imposed upon the Director-General. According to the latter's own testimony in his Memorandum of 1764 (V. C. II, 157), he says:

"What can we expect from . . . the removal of the Spanish colonies in Guayana so much nearer to our boundaries? The latter go to work openly, like a proud nation, and they can therefore be better opposed, an open enemy never being so dangerous as a secret one."

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VENEZUELA-BRITISH GUIANA BOUNDARY ARBITRATION

THE PRINTED ARGUMENT

ON BEHALF OF THE

UNITED STATES OF VENEZUELA

BEFORE THE

TRIBUNAL OF ARBITRATION

J. M. DE ROJAS,
Agent of Venezuela.

BENJAMIN HARRISON,
BENJAMIN F. TRACY,
S. MALLET-PREVOST,
JAMES RUSSELL SOLEY,
Counsel for Venezuela.

IN TWO VOLUMES.—VOLUME 2.

NEW YORK
THE EVENING POST JOB PRINTING HOUSE, 156 FULTON STREET
1898

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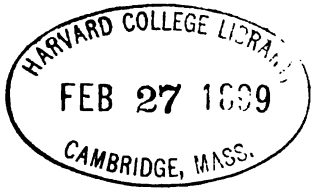

Hon. H. C. Lodge.

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CHAPTER XII.

DUTCH SETTLEMENT IN ITS BEARING ON THE QUESTION OF ADVERSE HOLDING.

Having stated the general principles lying at the foundation of the doctrine of adverse holding, it remains to consider how far, under the Treaty, and under the general principles of law apart from the Treaty, an adverse holding for fifty years by the Netherlands of any of the territory in dispute has been established. There is but one condiiton, specifically mentioned in the Treaty, which is generally sufficient to constitute an adverse holding, namely "actual settlement of a district."

A word may be said here as to the time-limit mentioned in Rule (*a*).

The period covered by the history of the Dutch colony is from 1648 to 1814, a period of one hundred and sixty-six years. Under these circumstances, and considering the importance which the parties attached to the time-limit, as shown by its insertion in Rule (*a*) of the Treaty, it would seem that the British Case should be found somewhere to state at what date the claim is made that the fifty-years' period begins to run. But one looks in vain through the whole Case and Counter-Case for any suggestion that at any particular date any fifty-years' period begins to run for any particular locality.

1. *Actual settlement of a district.*

The question what is sufficient to constitute an adverse holding in respect to actual settlement has been already discussed in the chapter devoted to the interpretation of the Treaty (pp.). As there shown the acts relied upon to establish adverse holding must in all cases be national acts, made under the authority of the adverse holder who claims as sovereign, and must be evidenced by

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a continued exercise of sovereignty, in other words, by political control. A settlement, in order to fulfill the conditions of adverse holding as to any particular locality, must be composed of inhabitants in greater or less numbers, who have adopted that locality as a fixed place of abode, and who have established there their homes and occupations with a certain degree of permanence; it must be under a recognized and actual political control exercised over the territory as territory, and over all persons therein; and finally, no such claim can be established beyond the area of actual settlement, nor in a geographical district, by anything less than a settlement of the district.

Starting with the Dutch possession of Kykoveral at the date of the Treaty of Munster, we find that between 1648 and 1814 the Dutch succeeded in making settlements to a certain extent and for a greater or less period

(1) On the Essequibo River, and at the mouth of the Cuyuni and Massaruni, below the falls of those rivers.

(2) At Pomeroon and its immediate neighborhood.

The question of settlement is also to be considered, although only for the purpose of showing its non-existence, in

(1) The Interior Territory, west of the Lower Cuyuni Falls and south of the Imataka Mountains, including the Cuyuni-Massaruni region.

(2) The Coast Territory, west of Moruka, including the Barima-Waini region.

The evidence as to these four localities will be considered in the above order.

(1) Essequibo.

The history of the Dutch colony of Essequibo is divided into two periods. During the first hundred years or thereabouts, the settlements or plantations were chiefly upon the points of land formed by the junction of the three streams,—Bartica Point, between the Massaruni and the Essequibo; Cartabo Point, between the Massaruni and the Cuyuni; the point where the penal settlement was

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afterwards situated, between the Cuyuni and the Essequibo, and the opposite bank of the Essequibo, with a few plantations lower down. This circle of plantations surrounding Kykoveral is the early Dutch colony of Essequibo.

No attempt was made to settle on the Cuyuni, Massaruni or Essequibo above the falls. The latter formed an absolute barrier, as far as colonial development was concerned, both on the Cuyuni and the Massaruni, as has already been shown in discussing the geographical features (Ch. VII, pp.).

The first period in the history of settlement in Essequibo is from

(1) *1648 to 1740.*

The statement is made in the British Case (p. 25), speaking of the period prior to 1648, that "the seat of government was at Kykoveral." This statement is not correct as indicating the condition of affairs at the date of the Treaty of Munster or prior thereto. Fort Kykoveral, on the island of that name, was not the seat of government in the sense that there was any settlement around it which it governed. Kykoveral was the settlement. There was nothing else.

At this date the establishment at Kykoveral was purely a trading establishment. The persons who occupied it were the unmarried employees of the West India Company. There were no free colonists; there were no plantations.

For the first nine years after the Treaty of Munster, these conditions remained unchanged. There is no record of any colonists or of any settlement. The direction of the post at Essequibo was in the hands of the Zeeland Chamber of the West India Company, and their first invitation to colonists was issued in 1656 (V. C. II, 28). A new invitation, granting additional privileges, was published the next year (V. C. II, 30). As a result of these efforts, on March 22, 1657, the first actual colonists arrived in the Essequibo, numbering twelve persons.

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The small results of this first undertaking led the Zeeland Chamber to make an arrangement with three Dutch cities which resulted in the settlement of the Pomeroon in 1658. This settlement will be taken up by itself.

In consequence of the energy with which the undertaking of the three Zeeland cities was started, the colony in the Pomeroon attained a rapid, perhaps too rapid development. For the moment all interest was centered in this colony; and although the Essequibo settlement was maintained and its Commandeur remained at Kykoveral, it showed comparatively little progress.

Not until 1664 do we find any indications of new development in this quarter. In that year the first allusion appears in the evidence subsequent to the emigration of the twelve colonists in 1657. This is the petition of Jan Doensen to the Zeeland Chamber, July 3, 1664 (B. C. I, 162), asking for a grant of land which he with several qualified associates had chosen and taken possession of " situated in the River Essequibo at Brauwershoek, upon which he has placed an agent, one Huibrecht Vinou, a Frenchman, provided with several negroes and other agricultural implements for the establishment of a regular sugar-mill there and of the further plantation needed therefor."

Brauwershoek was on the point already referred to between the Cuyuni and Essequibo, and therefore within the little circle already described surrounding the island of Kykoveral and in its immediate neighborhood. It was about at the present site of the British penal settlement.

The fact that there was no settlement of colonists in Essequibo at this time is further established by Doensen's petition, which also shows that there was no registry of lands in the colony. He asks that, "inasmuch as there in that country they have or can find no opportunity for having the ownership of their aforesaid plantation recorded and registered," the ownership may be recorded at home.

In 1665, during the war between the English and the Dutch,

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an English force from Barbadoes, led by Major Scott, attacked and captured Pomeroon and Essequibo, at both of which places he left garrisons in occupation.

The French, as the allies of the Dutch, harassed and blockaded the English garrisons, which in the following year surrendered, and the Dutch thereupon resumed possession and the West India Company its control.

The settlement on the Pomeroon having come to an end, Essequibo resumed its importance, and in 1669 the first cargo of sugar was sent from the colony, a result no doubt due partly to the fact that all the Pomeroon slaves were turned over to Essequibo.

In the next year, 1670, Hendrik Rol was appointed Commandeur; and in pursuance of the policy which he advocated, three plantations were started for the Company in that year in Essequibo. The colony was still in a primitive stage of development.

In 1674 the States-General chartered the new West India Company, limiting its possessions to Essequibo and Pomeroon.

It early became evident that the fort at Kykoveral was too far up the rivers to serve as a protection from attack by sea, and in 1684 we find the first tendency towards a movement in the direction of the river mouth. In that year the French were in the Orinoco, and in consequence of the alarm created by this invasion a "stronghold" of palisades was built on Stamper's Island, some distance down the Essequibo River (B. C. I, 167).

During the next twenty-five years the plantation increased in number and extent, yet as late as 1691 the whole colony contained not more than one hundred Europeans (Rodway and Watt, Chronological History, pp. 12, 86, 88).

The most complete picture of the daily life of the colony and the occupations of those who had it in charge in the early part of the eighteenth century is to be found in the Journal of the Commandeur from July, 1699, to June, 1701, printed in full in B. C.-C., pp. 47–158. To illustrate this Journal, map of the plantations

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was made by the Surveyor, Abraham Maas, in 1706, and sent to the West India Company by the Commandeur.

This map (Venezuelan Atlas, Map 59), taken in connection with the Journal just referred to, shows exactly the extent of the Essequibo settlements. It defines the boundaries of twenty-eight plantations, nearly every one of which is referred to in the Journal. Of these plantations, nine lay on the Essequibo below the junction of the rivers, twelve upon the Essequibo above, and the remainder on the Cuyuni and Massaruni in the immediate neighborhood of Kykoveral. The plantations lay on the river banks, and the land comprised in each grant extended a mile or two inland. None of these plantations were too far from the fort to make the journey, going and returning, in one day.

The plantations on the Cuyuni and Massaruni were much nearer to the island than the most distant plantations on the Essequibo itself. There was not a plantation on these rivers further than ten miles from the fort. All of them were below the falls.

During the next thirty years the plantations gradually increased, but almost wholly on the banks of the Essequibo. The river still remained the only means of communication. No roads were built, and there were no interior plantations. There was no village anywhere; the only part of the settlement which resembled a village was a collection of ten or twelve houses at Cartabo point between the Massaruni and the Cuyuni, opposite Kykoveral. At this point, in 1716, a new Government house was built, directly opposite the island, which was known as the "House Naby" (near by), at which the Court of Policy held its sessions. The few houses which gathered around it were locally known as Cartabo.

The lowest fall of the Cuyuni still remained the extreme limit of the plantations on that river, and it continued to be the limit as long as the Dutch colony existed. At this point the Company had two experimental plantations for raising indigo and coffee. The indigo plantation was begun in 1732 (B. C. II, 14). It was at

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the lowest fall in the Cuyuni (*Id.*, 201), where mention is made that a party of Spaniards "in Cuyuni have been down to the lowest fall, where your Lordships' indigo plantation is situated."

At the lowest fall of the Cuyuni an experimental coffee plantation was also established by the Company. From the report of the Commandeur of the Colony in 1730 (B. C. II, 10), this planta tion was partly above and partly below the fall. The Commandeur reports that

"on the 29th and 30th of September [*i. e.*, 1729] I inspected the coffee plantations in Cuyuni, both above and below the fall, and found many of the oldest trees withered, and most of them in a bad state, wherefore I ordered the Director, Saigné, to go and inspect the surrounding lands, and to have a new coffee and cocoa plantation laid out towards the next season, in order to see whether it would not be possible to grow the last-mentioned product in Cuyuni (where the ground is best fitted for it)."

About 1738 a number of slaves revolted, and established themselves on an island in the Cuyuni, between the lower falls and the mouth. It was finally arranged that they should continue to occupy the island under the Government, on performing certain work. This continued for a considerable time, the people being referred to as the "Company's half-free creoles" (B. C.).

In the Massaruni there was also a plantation in the immediate neighborhood of the falls. This was the Company's plantation as Poelwyck, which had been on an island near the fort, but which, in 1704, the Commandeur began to transfer to a point above the falls (B. C. I, 228). The British case states:

"The site can be identified by means of the map of 1748 by Storm van 's Gravesande, on which it is numbered 46."

A reference to the map in question shows that plantation No. 46, which is given in the table of references on the same map as Poelwyck, was not more than ten miles above Kykoveral, and therefore just about the lowest fall.

In 1735 an outlying post was established at some distance up the Essequibo River, at or near Arinda. This outlying post was maintained with more or less continuity through-

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out the Dutch history of the colony. It was mainly for trading with the Indians. Except the Outlier and Bylier employed at the Post, not a single white man ever lived above the falls of Essequibo.

(2) *1740–1814.*

In 1739-40 the garrison and the seat of government was transferred from Kykoveral to Vlaggen (or Flag) Island, afterwards known as Fort Island, fifteen miles from the mouth of the Essequibo. Here there grew up a cluster of buildings, including the fort, the public store houses, the barracks for the little garrison and the dwellings of the officers.

The real growth of the colony dates from this period, or perhaps a little earlier. Until 1735, it had remained nearly stationary. About that date its population began to increase. The trade in Indian slaves first reached considerable proportions about the same time.

At the time of the transfer, a strong tendency had developed on the part of the settlers to establish their plantations nearer the mouth of the Essequibo. After the removal of the fort the tendency was still more noticeable. The upper plantations were abandoned. In 1748 they were considered very remote.

In that year, an attempt was made to sell "the burdensome and unprofitable indigo plantation." The Court said, February 6, 1748 (B. C. II, 55) that "to our sorrow, we must report that in this matter we could in no way attain the desired end, inasmuch as, although the conditions were arranged very favorably, not one person was willing to bid a single stiver thereon, presumably on account of the great distance and the insalubrity of the River Cuyuni."

The old fort at Kykoveral was practically abandoned, though it was occasionally used for local purposes, especially in case of Indian disturbances on the upper part of the Essequibo.

In 1764 the condition of affairs was such that the Director-

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General could write, speaking of a movement of Indians from the Cuyuni to the Massaruni, that he had received such a report "from the few colonists who still reside in the upper reaches of the rivers" (B. C. III, 116). In 1770 Hartsinck, in his History of Guiana (I, page 263), states that the village of Cartabo had consisted "of twelve or fifteen houses," but that it was "now in ruins." By 1773 all demands for grants of land upon the river at the former site had ceased.

On December 23, 1773, Trotz, the Director-General, wrote the Company (V. C. II, 221):

"It is now an opportune moment for closing the Court, because there are no longer any grants of land to be made; no one will ask for lands in the upper reaches of the river, and most of them are already annexed as timber grounds for the plantations below."

The allusion here is to the old grants in the three rivers below the falls.

In a letter to the Company June 6, 1777 (V. C. II, 232), A. A. Brown, the Secretary in Essequibo, inquiring whether lands which have been granted "formerly or long ago, or which have been acquired by purchase or inheritance," and which are at present not at all under cultivation cannot revert to the Company, writes:

"If so, then the Company has a right to at least three quarters of this extensive colony since there are several planters who hold thousands of acres of land which are not under cultivation. For most of the old planters, as soon as the lower lands were brought under cultivation, transferred their plantations which lay above this fort or Flag Island, brought off all their slaves, mills, cattle, etc., and practically abandoned the old plantations; but, in order nevertheless to retain their right, as they fancy, to those upper lands, they sent thither all their old and decrepit slaves, who can be of no use on the new plantations.

Thus one finds above this island (which is distant only one tide from the mouth) not one sugar, coffee or cotton plantation except only that of the ex-Councilor S. G. van der Heyden, situated a great tide above this island, at the mouths of the two rivers Mazaruni and Cuyuni.

In these rivers, likewise, just as in the river of Essequibo, properly so-called, there can be found not one plantation which furnishes any products

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except a little cassava bread, and this of so slight importance as not to deserve mention.

It is evident from the above statements that there were no settlements or plantations in the rivers above the falls.

Three times in its later history, before the cession of the colony to Great Britain, it was subject to military occupation,—by the British and subsequently by the French, from 1781 to 1784; by the British from 1796 to 1802. and again by the British from 1803 to 1814.

It appears from the official reports of the Dutch Governors themselves that by the close of the eighteenth century the original site of the colony in the neighborhood of Kykoveral had practically become a wilderness. The movement of the colony was toward the east bank of the Essequibo and around the coast to the eastward toward Demerara. A mere inspection of the maps (Ven. Atlas, Maps 66, 67, 68, 70) shows that before the plantations on the west had reached the mouth of the Essequibo those on the east had approached Demerara. At the close of the period, however, the plantations began to fill up the coast to the north of the mouth of the Essequibo on the west, known as the Arabisi or Arabian coast.

In summing up the description of the character and extent of the Essequibo settlement, considered as separate and distinct from that of the Pomeroon, it appears that the limits of the Essequibo colony, as far as actual settlement is concerned, may be fixed with substantial accuracy. They are clearly defined on the side of the Cuyuni and Massaruni by the position of the falls. The meridian of 59 degrees longitude west of Greenwich crosses these two rivers at a point from eight to twelve miles west of the lowest falls. All the territory that can possibly be claimed by Great Britain in this controversy as being within the settlements on the Cuyuni and Massaruni is, therefore, well within this meridian. It may also be remarked of this line that the whole course of the Essequibo during the five hundred miles of its length is to the eastward of it,

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except possibly at its source in the mountains of Brazil. It is further to be noticed that to the eastward of this line are the headwaters of all the "little rivers" emptying into the lower Essequibo from the west. A line starting on this meridian, and following it south to the parallel of 6 degrees N., thence along that parallel to the Essequibo, and up the Essequibo to the boundary of Brazil, takes in all the settlements ever possessed by the Dutch on the Essequibo and its tributaries.

(2.) Pomeroon.

The Pomeroon is a river comparatively inconsiderable in size, which rises at a point twenty-five or thirty miles west of the Essequibo and flows in a northerly direction on a nearly parallel course. Upon reaching a point five miles from the seashore, it takes a bend to the northwest, and during the remainder of its course runs parallel with the coast line, forming a long peninsula or strip between the river and the ocean, which terminates in Cape Nassau, still twenty-five or thirty miles west of the mouth of the Essequibo. Near its mouth it receives the waters of the Wacupo Creek, a short stream coming in from the west; and another small stream, the Moruka, emptying into the sea, lies a mile or two further west.

The ordinary means of communication between the Pomeroon and the Moruka was by sea. Interior water communication between the Pomeroon and Essequibo is of comparatively recent date, and is accomplished by means of a canal at Tapakuma. During the Dutch period the ordinary communication between the Pomeroon and Essequibo was by sea.

There was no communication between the Pomeroon district and the Berima-Waini region, except through the semi-artificial itabo near Moruca Creek, a means of communication which, according to the best English official authorities, was always exceedingly uncertain, and often impassable for months at a time.

The first settlement in the Pomeroon was in 1658, and lasted

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until 1665. The second settlement was in 1686, and lasted until 1689. These are the only settlements which the Dutch made on that river, or in the neighboring territory.

The first of the Pomeroon colonies was known as Nova Zeelandia. It was the result of the agreement made December 16, 1657, between the three Zeeland cities of Middelburg, Flushing and Vere and the West India Company to fit out a colonizing expedition, consisting of two ships, one to carry out the colonists, the other to bring slaves from the coast of Africa. The ships sailed in February, 1658, and arrived at their destination in June.

By 1661 the colonists had occupied sites on the Demerara and also on the Pomeroon; they had divers plantations and a considerable number of settlers; the chief place was called Nieuw Middelburgh. (B. C. I, 148.)

Many documents are attached to the British Case to show the flourishing character of the Pomeroon settlement, which was thus begun in 1658. It is not necessary to dwell upon this point. It is conceded that the Dutch settled on the Pomeroon in 1658, and that they had several plantations and raised what was, for a new colony, a considerable crop. It may well have been at the time the most flourishing of the Dutch colonies in Guayana. Its prosperity, however, and in fact its very existence, came speedily and suddenly to an end.

In 1665, an English force under Major Scott attacked and captured the settlement. (B. C. I, 166). At that time, according to Governor Byam (Journal, B. C. I, 167, which enumerates all the colonies in Guayana), the westernmost of the Dutch colonies was "Bowroom [Pomeroon] and Moroco, alias New Zealand." It is stated to be the greatest of all the colonies the Dutch ever had in America, "16 leagues leeward of Dissikeeb." The colonies in 1666 were recovered by the Dutch.

The resumption of possession by the Dutch had no results in the Pomeroon. The settlement at that point was entirely abandoned. There is no evidence to show that after the English occu-

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pation any attempt was made to restore the colony, or that a colonist remained in the neighborhood; on the contrary, all the evidence goes to show that Pomeroon returned to its original condition of primeval wilderness, and that it so remained from 1665 until 1686.

"In 1666 the colony was recaptured by the Dutch, but the settlement on the Pomeroon remained neglected for some time."

It was not only neglected, as admitted in the British Case, but it was entirely abandoned.

The next reference to the locality is thirteen years later, when the Commandeur at Essequibo, October 20, 1679 (B. C. I, 181), writes:

"The River Pomeroon also promises some profit; for, in order to make trial of it, I sent thither in August last, one of my soldiers to barter for annatto dye."

Tidings came, however, of the approach of a fleet of Caribs from the Corentin, which intended to visit the Essequibo and the Pomeroon, with a view to making an attack. No attack took place, but in consequence of the rumor the Commandeur "called into the fort the above-mentioned outlier in Pomeroon, both to save him from being surprised, along with the Company's goods, by these savages, and to strengthen ourselves in case of attack." On the 8th of October, the soldier accordingly came to the fort with the goods. The Commandeur says that, as the scare is now over, he will send him back in four or five weeks, "and, if the trade prospers, it would not be a bad idea to build there a small house for two or three men, so that they may dwell permanently among the Indians and occupy that river."

This intention was carried out about 1683, when Daniel Galle was sent to the Pomeroon as Postholder, his place being taken in 1684 by Abraham Baudaart (B. C. I, 186).

At this time the Essequibo colony was obtaining annatto dye by trade with the natives through its employee in the Pomeroon.

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In 1685 Jacob de Jonge, who had been previously in Essequibo, petitioned to be allowed to settle on the Pomeroon. The request led to an examination of the history of the Pomeroon settlement, from which it appeared that one of the three cities which had founded the settlement, as early as 1660, had made default in its quota of contributed capital, and that in 1670 Pomeroon was turned over to the Company (B. C. I, 188-193).

As a result of this examination it was decided in 1685 (B. C. I, 193), to appoint De Jonge Commandeur for the new colony and to send out a ship. In April, 1686, De Jonge arrived, and proceeded to establish himself on the Pomeroon. His reports of 1686 and 1687 (B. C. I, 199 and 202), show that at the time of his arrival the settlement in Pomeroon had been entirely abandoned; that there was noone there except Baudaart, the Outlier, and that of the former flourishing colony of Nova Zeelandia nothing was left. In the former of these reports he says:

"I have no doubt but that the river will shortly become inhabited."

In the latter, he says:

"That here, indeed, there have been some sick is true, at which I am not astonished, as we came into a closed-in wood; but now there are some openings."

The Pomeroon thus became for the time a separate colony entirely independent of Essequibo, and lying between it and Barima. De Jonge received only a half-hearted support from Beekman, the Commandeur at Essequibo. He says (B. C. I, 201):

"The Postholders" [Outliers] "placed in Pomeroon to barter dye I had determined to keep, but the Commandeur Beekman said that he had need of his people, so the Commandeur summoned them and made them stay here at the fort."

The subsequent reports of De Jonge, in 1687 and 1688 (B. C. I, 202, 206, 207), speak of the slow and feeble progress of the colony. This was much delayed by the want of slaves, although a small fort was erected and the beginnings of plantations were made.

All this was brought to an end in 1689, when the Pomeroon

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was captured by the French and Caribs from Barima. The colonists betook themselves to Essequibo, having no provisions left in Pomeroon (B. C. I, 210). Thereupon a resolution was passed by the West India Company, November 15, 1689, that everything which had been brought to the Pomeroon on behalf of the Company, both the employees and slaves and other chattels, should be removed from there to Essequibo, there to be employed in the service of the Company, leaving only three men with a flag for the maintenance of the Company's possession at Pomeroon (B. C. I, 211). This ends the history of the second Pomeroon settlement.

The orders of the Company were carried out, and from this time on an "Outlier," with three or four men, two of whom were generally Indians, were maintained at or near that river, chiefly for purposes connected with trade.

The history of the Pomeroon during nearly the whole of the next one hundred and twenty-five years and until the cession of " the Establishment of Essequibo" to the British, in 1814, is a history simply of the post. The position of the post was changed from time to time.

In 1700 it was removed to the Wacupo, a small tributary of the Pomeroon on the west, from one of whose branches a passage through the savanna, not, however, apparently much in use, led to the Moruka. For two years the old post was retained, and in 1704 and 1705 the names of either "Outliers" or "Byliers" at both places are to be found in the Muster Rolls (B. C. VII, 151, 153, 154).

In 1707 the Commandeur suggested to the Company the laying of a toll " in the rivers Moruka and Pomeroon" on the traders from other colonies who pass through these inland waters for traffic on the Orinoco. The plan was not immediately adopted, but duties were subsequently collected at the post.

In 1726 Commandeur Gelskerke advised the removal of the post from Wacupo to the Moruka, on the ground that the

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Wacupo was too far out of the ordinary course of boats, which habitually came down the Moruka and passing over the intervening two or three miles, between its mouth and that of the Pomeroon, evaded the attention of the post in Wakupo.

The removal was made, though the new post was still often called by the old name, which leads to some confusion in the documents. The new site was on the right bank of the Moruka, about twenty miles from its mouth.

As all boats coming from the Barima-Waini district by the Itabo entered the Moruka, they had to pass the post.

At this point the post remained with but little interruption during the greater part of the century.

In 1754 it was found that one of the purposes for which the post at Moruka existed, namely, the detection or checking of runaway slaves, was not accomplished by it, for the reason that the favorite route of the runaways was no longer by the inland passages, but by sea, following the westerly current that runs along the coast.

In order to capture the slaves, a subordinate lookout was placed in 1758 at the mouth of the Moruka. It was a house fifteen yards long, with a stockade and gates. It was arranged with a colonist named Beissenteuffel to keep the watch at this outpost, and as compensation he was to be allowed to make a plantation at the mouth of the river (B. C.,). Soon after, however, Beissenteuffel died, and there is nothing to show that the watch-house was kept up. According to Hartsinck, writing in 1770, it "has since fallen into ruin."

In 1779 the post of Moruca was moved to the site of the watch-house at the mouth of the river, and it was occupied by a handful of soldiers. Here it remained until the British occupation, in 1796.

In 1803, when the Dutch resumed possession for a short time, they found the post in a dilapidated condition.

The plantation upon which Beissenteuffel had been allowed to

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establish himself in compensation for his services at the watch-house, at the Moruka mouth, passed into the hands of a family named Rousselet, and was in 1769 offered at sheriff's sale, with its belongings. In reply to a complaint of the Rousselets, the Court of Policy stated: "This land was granted without determination of the number of acres, and upon the express condition that the owner or owners should be bound to establish an outpost there," and that it had been "for a considerable time left uncultivated by the petitioner, in a word, fallen to ruin and at nearly every tide under water." (V. C. II, 318.)

This is the plantation of which it is said in the British Case (p. 56) that

"In 1771 a private estate of 2,000 acres in Moruka, with cattle upon it, came into the market, and though it seems to have been in an uncultivated condition, it found a purchaser."

The price paid was two hundred guilders (B. C. IV, 82), or about seventy-five dollars.

The Director-General in a report to the Company, June 27, 1757 (B. C. II., 135), gave his views as to the opening up of the Pomeroon to settlement, which had not been done up to this time. He said:

"I regard the River of Pomeroon as a district bringing no earthly profit to the Honorable Company; and I am, moreover, convinced that if we should at any time be so fortunate as to see this river and Demerary fully inhabited (which is not to be expected for the next fifty years), since quite 300 plantations, and possibly more with a little trouble, can still be laid out, no one would then be kept from settling in Pomeroon by the fact that there was no boureway wood left there."

The report of the Director-General, June 15, 1758 (B. C. II, 142), says that "about ten or twelve years ago the Court of Policy granted permission to one Erasmus Felderman to live in that river and plant his necessary bread, without, however, possessing any land in proderty." At the death of Felderman, his heir wanted to own this land, but his request was denied by the Council.

During this whole period from the extinction of the second

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Pomeroon colony, in 1689, there was no settlement in the Pomeroon, with the two exceptions named.

Grants were made at the time of the French occupation in 1784 to French colonists, but before they could begin work the French had withdrawn and the Dutch were once more in possession of the Post of Moruka.

After this resumption of possession, in 1784, frequent applications were made for lands in the Pomeroon, but no action could be taken on these until the district had been surveyed, which was only accomplished in 1794.

In 1796 the British took possession of the Essequibo colony, and at that time nothing had been done towards the settlement of the Pomeroon. This occupation ended in 1802, and for some months the colony was again in Dutch hands, at which time it is possible that the beginning of a settlement may have been made.

The conclusions as to the Pomeroon are as follows:

(1.) The only settlements, properly so-called, in the Pomeroon were those from 1658 to 1665, and from 1686 to 1689, both of which were entirely destroyed by foreign invasion.

(2.) Of isolated plantations, there is one on the Pomeroon (1746 to 1758) of Felderman, who was granted permission to raise bread enough to keep him alive, but without owning any land, and whose plantation reverted to the Colony at his death. In Moruka, there was the case of Beissenteufel, whose plantation really grew out of his employment as the occupant of the watch-house at the Moruka mouth, and which finally also reverted to the Colony. These cannot be said to answer any of the required tests of settlement and they cannot be connected with the colonies of the previous century, by reason of the long lapse of time.

One point remains to be noticed in connection with the Pomeroon: the line of occupation, if occupation it should be judged, which the Dutch maintained or attempted to maintain in this

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district is well defined. Its extreme western limit was marked by the upper post on the Moruka. Whatever the occupation amounted to, it never extended a foot beyond this post. A little further to the westward the Moruka itself ceases to have any importance and the savanna begins, through which by more or less artificial means and with considerable interruption and uncertainty a passage in the rainy season was effected to the Coast Territory lying to the west. So far as natural boundaries are concerned, this savanna would seem to be the natural boundary. It so happens that the same meridian to which reference has already been made in speaking of the western limits of settlement in Essequibo crosses this savanna—the meridian of 59° west. It has been already stated that the creeks which are the tributaries of the lower Essequibo on the west all lie to the eastward of this meridian.

It is also to be noticed that the territory to the east of this line includes the whole of the Pomeroon and its tributaries, the whole of the Wacupo, the streams by which the Wacupo and the Moruka are connected, and all of the bed of the Moruka that lay within the confines of the highest Dutch post, as well as a considerable stretch of territory beyond.

If the Pomeroon and Moruka should be decided to be within the limits of Dutch holding, the natural line of demarcation between this holding and that of the Spanish would not be beyond this meridian.

(3.) Territory in the Interior.

The large tract of territory between the Essequibo and the Orinoco south of the Imataka Mountains, was, during the whole of the Dutch ownership of Essequibo, divided between forests, and savanna or meadow land. There was no exact line of demarcation between the two, nor was there any exact location that the word "savanna" indicated. The western part of this territory was entirely open savanna, and the extreme eastern part was

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a wilderness, difficult of access. The middle region was partly savanna and partly forest.

Through this district the rivers Cuyuni and Massaruni take their course. The Cuyuni is 300 miles long and has many tributaries, so that its drainage basin extends across the whole district and approaches to within 20 miles of the banks of the Orinoco. The Massaruni is 200 miles long, and winds through the interior of the district. The falls, just above the mouths of the rivers, render them impassable to navigation.

The Court of Policy, in a letter to the West India Company, July 14, 1731 (B. C. II, 14), stated:

"The great number of rocks which lie in these two rivers, and which occasion the falls by reason of the strong stream rushing over them, makes these rivers unnavigable for large vessels, wherefore it is impossible to establish any plantations there, although the soil is very well fitted for it."

This shows conclusively that no settlements had been made in Massaruni or Cuyuni above the falls.

The point of view from which the colonists regarded the Cuyuni is shown by the failure to sell the indigo plantation at the falls in 1748. As Storm said (V. C. II, 55):

"Not one person was willing to bid a single stiver thereon, presumably on account of the great distance and the insalubrity of the River Cuyuni."

In 1750, Storm advocated more settlers, and said (B. C. II, 66) that:

"Hereby the colony would obtain a flourishing and, in course of time, a formidable state, and the interior (*which is unknown*) could be explored and cultivated, the lands which lie along the river devoted to growing sugar and rice, and those in the interior to other crops, by which many discoveries could doubtless be made which would bring great utility and profit. For this nothing is lacking but able and industrious people, and it is a shame (if I may use the word) for the Dutch, that two nations not to be compared to them for industry, namely, the Portuguese and the Spaniards, who are situated at the right and left of these colonies and who are groaning under so hard, even slavish, a rule, are owners of so many treasures and so fortunate in their discoveries. . . .

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"The reason why so little has been discovered is that the old settlers through rooted habit and those born in the colony through an inborn indifference, so strongly cling to their old way that nothing, not even convincing reasoning can tear them away from it, and nothing in the world can induce them to any new undertaking, there being among them no industrious and enterprising persons."

It is evident from this that no Dutch settlement existed in the interior. The country was, however, frequently traversed by white traders, Spaniards, French and Dutch. The trade there was a trade in provisions, hammocks, annatto dye, and copaiba. If the evidence contains more frequent references to Dutch trade than Spanish, it is because the colonial authorities in Essequibo, being the agents of a trading company, were obliged to report on it, while the others were not. During the years 1680 to 1683 the trade of the Dutch was much interrupted by a war between the native tribes, which is frequently referred to in the reports of the Commandeur. (V. C. II., 40, 41, 43, 44.)

In 1684 Beekman, the Commandeur, complains (V. C. II, 45) that "the copaiba and curcai are much bought up by the Spaniards." In 1685 he complains of the French in the upper Cuyuni, who "gather the copaiba from the trees" (V. C. II, 52). In 1686 he says (V. C. II, 58): "The French scour the country up there and buy up everything."

Many references are made to the horse trade in Cuyuni about the beginning of the eighteenth century, a trade conducted with the Spaniards, by whom the horses were raised. At a later date this trade was, for a time, prohibited to the Dutch by the Spaniards.

In the middle of the century Spanish traders overran the Cuyuni district, and it was their regular practice to come down to the Essequibo colony to trade; so much so that it was necessary to make regulations to induce them not to stop and do all their trading at the upper plantations, but to come down to the Company's Essequibo post at Flag Island. (B. C. II, .)

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The present chapter is not a description of settlements in this territory, because of settlements there were none. It is an absolute and incontrovertible fact, as far as the evidence in this proceeding shows, that the Dutch never had a single settlement of any kind whatsoever between the falls of the Cuyuni and Massaruni on the one hand and the Orinoco on the other. There is not the remotest allusion in all the papers here presented to such a settlement. There is, as already stated, considerable allusion to the transit over this territory of Indians and of Spaniards, French and Dutch for trading purposes, the last consisting principally of old negroes familiar with the country, who were used as roving traders by the Dutch for traffic in annatto dye, cassava bread, and horses. Reference is also made to one or two places called "dye stores" or "dyehouses" in the Cuyuni and Massaruni, meaning thereby places where the annatto dye, which was one of the principal objects of trade, was sold by the Indians to the various white traders. Possibly other products of trade were brought there, such as the dried cassava root prepared by the Indians, and generally used both by Spaniards and Dutch as a substitute for bread. The British Case, singularly enough, mentions (p. 81) these "annatto stores" as evidences of Dutch political control. There is not a particle of evidence to show that the Dutch had anything to do with erecting or maintaining them, or that they were otherwise than mere shelters of the Indians to which all traders, Spanish and French, as well as Dutch, resorted for trading.

The only fact which can be connected with a local habitation and a name on the part of the Dutch in the interior territory is the establishment of so-called "posts" in the neighborhood of the Cuyuni River. The first reference to these posts is in 1703, when the Muster-Roll of the colony (B. C. VII, 152–3) refers to various outliers, including one Allart Lammers, as outlier, in the River Cuyuni. Two Muster-Rolls contain this entry, one of June 14, 1703, the other of July 27, 1703. Other Muster-Rolls are given,

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both before and after this period, extending from 1691 to 1786, but no further mention of an outlier in Cuyuni occurs until 1755. The entry is confirmed and explained by the pay-roll of 1704 (V. C. II, 71). The pay-roll shows that Allart Lammers was enrolled May 20, 1703, in the Company's service as "outlier in Cuyuni." On October 1, 1703, he was, by sentence of the Court, placed as sailor on the yacht, evidently for misconduct, and his wages from the period of his appointment, namely, four months and eleven days, were confiscated.

It is clear from the above that an intention existed to establish a trading post in Cuyuni, which was to be located somewhere "in the savannas" of that river, six weeks by water "from Kykoveral." It is clear, also, that Lammers was appointed as outlier or trading agent for this prujected post; but as he was removed for misconduct on the first of October, he never could have gone to his post. He could not possibly have gone to his post, have been reported for misconduct, and have been recalled in consequence, tried and sentenced and placed on board of the yacht in the four months and eleven days referred to. It is obvious that Lammers never went to his so-called post, and that the post never existed except in the intention of the Commandeur. The office or employment disappears from the muster-roll, and does not reappear for more than half a century.

The explanation of the project and its abandonment is very clear. The most important trade in the Cuyuni valley at this period was the horse trade. The headquarters of this trade were in the savannas near the upper Cuyuni, where the Spaniards raised and pastured their horses. In the previous year (V. C. II, 65) the Commandeur had reported that "the trade in horses up in Cuyuni does not go as briskly as it used to," and it was doubtless with a view to stimulate this trade that he conceived the idea, in the spring of 1703, of sending an Outlier to stay there. In that very summer he reported (V. C. II, 69) that "the Spaniards will no longer permit any trafficking for horses on their territory."

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He therefore concluded that it would be of no use to send an Outlier, and Lammers, who had in the meantime shown his unfitness, was placed on board the yacht.

In 1755, fifty-two years after the abortive appointment of Lammers, the first "post" was established in the Cuyuni. This post is located with exactness by a letter of the Commandeur on the subject, in answer to a specific inquiry by the Company as to its location. He said (B. C. II, 180):

"The post . . . was situated about *fifteen hours* above the place where Cuyuni unites with Massaruni."

The "hour" used by Storm, not as measure of time, but always as a measure of distance, had a definite meaning, and it is shown on the map which he prepared for the Company in 1748 (Atlas Ven., map 60) to be about three English statute miles, which would make it about forty-five miles above the junction of the two rivers, or thirty miles above the lowest fall.

This site of the post is confirmed by the statements made by the Outlier and Bylier who were captured at the Post, Stephen Iskes (called in the Spanish Estevan Hiz) and Guilliaam Patist de Bruyn (called in the Spanish Juan Bautista Brum), before the Spanish Magistrate as to its location (B. C. II, 166–167), both of whom stated that it was a place called "Cuiba," on the banks of the Cuyuni, which would be the ordinary Spanish spelling of "Quiva."

The only place bearing this name on the banks of the Cuyuni is at a point about fifteen miles above the Tonoma rapids, where a small stream, the Quive-Kuru, enters the Cuyuni from the north.

Sheet 1 in the Atlas of the British Case places "the probable site" of the Dutch post of 1755 close to the mouth of the Acarabisi, about sixty miles further up the river. For the location there is not the slightest foundation. The name as the Quive-Kuru has also been misspelled on this map of "Querrikuru," and its position has been transposed with

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that of the Yanekuru, the adjoining stream. In the same Atlas (British Appendix), however, the correct location and spelling, "Quivekuru," are given in Maps 38 (Hebert—the official map of 1842, prepared in the Quartermaster-General's office), 40 (Mahlmann), 41 (a map prepared, revised and corrected to 1875 by Chalmers, the Crown Surveyor of the Colony, and Sawkins, Director of the Geological Survey of British Guiana), 42 (a map prepared, revised and corrected to 1886 by Chalmers and Sawkins), 44 (Schomburgk—where the spelling is "Quivé Kuru"), 46 (Schomburgk), and 47 (Schomburgk).[1]

The muster-rolls show the number of persons employed by the Company at this point. In 1755–56 there was only Neuman, the Outlier or Postholder. In 1757 there was also a Bylier or Assistant. In August, 1758, there were still the Outlier, Iskes, and the Bylier, Bruyn. These are the only entries in reference to the post.

The object of the post was to assist in the recovery of fugitive slaves, to promote the trade with the Caribs in *poitos* or Indian slaves, and to see that the Dutch colonists did not engage in the Company's trade.

In 1758 a detachment from the Spanish garrison was sent, under the order of the Commandant of Guayana, for the purpose of destroying the post and apprehending its occupants (B. C. II, 150). The expedition proceeded in August and September, under Captain Bonalde. Bonalde found the post, consisting of a hut covered with palm branches and without side walls, the ordinary form of the "shelter" or "rest-house" in that country, and taking the Outlier, the Bylier and their servants, carried them off as prisoners to Santo Thome and afterwards to Cumaná. He also destroyed the shelter.

Thus ended the post of 1755, after an existence of three years. It was never re-established.

[1] A complete and conclusive discussion of the locality of this post is to be found in App. Ven. C.-C. II, 150–65.

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In a report of February 22, 1763 (B. C. II, 221), the Director recommended to the Company that a new post should be established in the Cuyuni, which recommendation was approved by the Company July 7, 1763 (B. C. II, 225), and men were sent out to be employed for that purpose after a special duty in Demerara was completed. In the same year, the Commandeur referred to it (V. C. II, 154) as "the still-abandoned post in Cajoeny, abandoned since the raid of the Spaniards."

Time passed, but the Post in the Cuyuni was not re-established. The Director reported to the Company, December 28, 1764 (B. C. III, 117):

"I have not been able to get any Indians up to the present to aid me in re-establishing the post in Cuyuni, and without their help it cannot be done."

In 1766 the post was not yet established. In that year Storm wrote (V. C. II, 164):

"I have already engaged a Postholder [for Cuyuni], who is well acquainted with Indian languages, and as soon as some of the buildings are ready I will give him a commando of one under-officer and six men to begin with, until it is well established."

The Director-General was unable to find the men, and concluded to wait for them. In October, 1766, he wrote (V. C. II, 167) that—

"The Postholder of Cajoeny will, in the beginning of September, . . . proceed up that river, in order to build dwellings and lay out bread-gardens, with the assistance of the Indians, after which the work there will be properly regulated."

He was disappointed, however, by the illness of the Postholder shortly after his arrival.

On December 3, 1766 (V. C. II, 167), he reported:

"The Postholder of Cajoeny is, according to the latest reports, lying ill at the Post. This is a great pity, because he makes great progress in his work, and we should lose a great deal in him. But sickness is the fate which overtakes all, without exception, who proceed up the Cajoeny for the first time, especially in the dry season, which still continues."

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A week later (V. C. II, 167) he wrote that he had given the Postholder provisionally two assistants, but

"I dare not trust any of the soldiers here to go there. He is at present engaged in putting up the dwellings and in bringing the Post into some order."

On March 9, 1767, the Company (Zeeland Chamber) wrote to the Director-General (V. C. II, 168):

"The transferring of the post in Cuyuni, as also the work at the Fort, appears to us to advance rather slowly, and we shall be glad to learn that both these tasks, in accordance with the hope which you give us thereof, are at last finished."

In this year the post may be said to have been finally established. Its location, below the first post, has been discussed in another place (p.).

In a letter of the Director-General, June 27, 1767, he said (V. C. II, 170):

"From my preceding letter you will have seen that the post in Cuyuni is already in order (except a few soldiers)."

These soldiers were never sent.

It did not, however, work satisfactorily, as will be shown later, when we come to consider it as a factor in political control.

In a report of April 9, 1768 (B. C. III, 164) the Director said:

"Having also been obliged to remove Pierre Martin, the Postholder of Cuyuni (because the Indians will on no account have a Frenchman there) as well as the one in Maroco, I have no one there now but the two assistants . . . In Cuyuni it is now quiet so long as it lasts; I wish I had a competent Postholder for that river."

Early in 1769 the two Assistants or Byliers, Van Witting and Van Leeuwen, were much alarmed by rumors of a threatened attack on the post by Spaniards and Indians from the Massaruni (B. C. IV, 1). These rumors continued to grow until in a panic they decided to abandon the post, without authority, and remove it to an island some miles nearer to Essequibo, in fact but a short distance above the lowest falls (V. C. II, 189). The position

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selected at Toenamoeto, an "island," as Van Witting states, "lying between two falls," was evidently selected on account of its obscurity and remoteness from possible attack. The Director-General was obliged to acquiesce, although doubtless realizing that in that position it would be of no use whatever.

In June of that year Van Witting asked for his discharge. He remained, however, during the following year and the next, when his service was cut short by death, as is stated in the pay-roll for 1772.

The second Bylier seems to have served out his year and then returned to the ranks of the garrison.

This ended the last post in Cuyuni.

The history of the posts in the interior, therefore, shows:

(1.) An intention to create a post in 1703, at a locality which cannot be ascertained, which was never carried out.

(2.) The first post at Quive-Kuru, forty-five miles from the mouth of the Cuyuni, which lasted from 1755 to 1758, when it was destroyed by force, by direction of the Spanish Commandant.

(3.) The second post at a point lower down the river, from 1766 to 1769.

(4.) The third post at Toenamoeto, between the falls of the Cuyuni, from the abandonment of the last-named post, from 1769 to 1772.

Of course these posts were not settlements. That is a question which it is needless to discuss. There was not a single attribute of a settlement about them. Each of them consisted of a rude hut, temporarily occupied by one or two employees for the purpose of attending to matters of trade in which the West India Company was interested. They were not the homes of these employees. They were not places where colonists fixed their abode. Their occupants were not even squatters, for all they did was to reside there temporarily for the performance of their duties. Nor did the posts fulfill the requirement of the rule as to fifty years' duration.

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Beyond these posts there is nothing that bears the faintest suggestion of Dutch settlement in this district. There is no evidence that the Dutch were ever present there except individually as traders, and occasionally on the extreme eastern border for the purpose of recapturing runaway slaves. Of course the traders, when they went into the district, spent some time there. The difficulties of navigating the river and the impassable character of the forest made progress necessarily slow. It took six weeks to reach the upper Cuyuni, and trade in those regions was necessarily subject to great delays. Traders were therefore absent for a considerable time, but their presence under such conditions in the territory did not constitute in any sense of the word a settlement.

Not only is there no reference in the evidence to such a settlement, but the whole course of the correspondence of the Dutch Governor shows clearly that there were none. It is not possible that the Director-General could have written the letters of which extracts have been given in discussing the question of boundary if there had been a settlement anywhere in the Cuyuni valley. One reason for this clearly was that the character of the country immediately west of Essequibo, including the river Cuyuni, instead of offering avenues for settlement, presented nothing but obstructions which only the most hardy and enterprising could overcome.

During the same period the interior territory was penetrated from the west by the Spaniards, and numerous settlements were made there in connection with their missions, at which houses were built, plantations cultivated, crops and cattle raised, trade carried on, Indians pacified, converted and civilized, and all of this continued from nearly the beginning of the eighteenth century down to the time of the Venezuelan revolution, in 1817. There is no doubt about the existence of these settlements. The evidence is full of references to them and detailed reports upon them. The numerous lists of them given in the evidence annexed to both cases

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show that they numbered about thirty. Their existence and their flourishing character are admitted by the British Case. They began in the territory close to the Orinoco, and they advanced further and further as time went on. The fort established in 1792 at the mouth of the Curumo was on the south bank of the Cuyuni. Besides those mentioned in the savanna region, three others are named at outlying points, namely, on the Wenamu, a tributary on the right bank of the Cuyuni, on the Massaruni, and on the Siparuni, a tributary of the Essequibo itself. The last three rest upon the concurrent evidence of one of the most prominent Dutch colonists, the Dutch Post-holder of Arinda, and of one of the Jesuit mission fathers, all reported by the Director-General himself. (B. C. .)

There would be no need to discuss the question of Dutch settlement were it not for the amazing statements made upon that subject in the British Case. These must be taken up in detail. First of all, however, we must note the effect of placing on the general map of the territory in dispute (Map 1 Br. Atlas) a number of designations, with every appearance of town-sites, to which the name "Dutch residence" is attached. One of these is on the Tocupo, a branch of the Curumo. A second is on the upper Cuyuni, above Uruan. A third is on the Avechica, near its junction with the Uruan. A fourth is near the Wenamu. At the mouth of the Curumo, on the western or northerly bank of the Cuyuni, is what is called a "Dutch Settlement 1750." A casual inspection of this map would lead one to suppose that there was a good deal more in the way of Dutch settlement in this negihborhood han on the banks of the Essequibo. As a matter of fact, there was neither a Dutch settlement nor the abode of an individual Dutchman at a single one of these points. The evidence as to these so-called "residences" and "settlements" will be referred to in detail.

The British Case is also misleading (p. 31) in its reference to the early posts:

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"The first muster-roll of the Company's servants which has been preserved, viz., for the year 1691, includes the names of the Postholders at Pomeroon and Demerara. The muster-roll for the year 1703 includes, in addition to the Postholders in the Rivers Demerara, Mahaicony, and the Pomeroon, the name of the Postholder in Cuyuni 'up in the savannah six weeks by water.' The position so described is clearly very distant, the savannah referred to being the Pariacot Savannah. The approximate site, which cannot have been lower than the junction of the Yuruari with the Uruan, is marked on the Map in the Atlas, p. 1."

From the above statement it would appear that the British Case is here giving some general information as to the posts, derived from the muster-rolls. It says in substance that the first one includes the names of those at Pomeroon and Demerara; that for 1703 includes, in addition to the two Postholders named and that of Mahaicony, the name of the Postholder in Cuyuni. It is difficult to read the passage without forming the conclusion that from the year 1691 there were posts at Pomeroon and Demerara and from the year 1703 there was an additional post in Cuyuni. The fact is not stated that no allusion to the Postholder in Cuyuni, or to any Postholder in that region, occurs again after 1703 until 1755, when the post ultimately destroyed by the Spaniards was established. Nor is the very material fact stated that there is no evidence that the Postholder mentioned in 1703 ever went to the post, or that Lammers, who was appointed on the 20th of May, was discharged for insubordination on the first of October—a fact which would have precluded the possibility of his having been at the post at all, and which shows that the post, though proposed, was never established. The climax, however, to the statement about this mythical post is reached when the Case gravely refers to an approximate site which has been marked upon the Map (Sheet 1, Br. Atlas), where we find a location in the neighborhood of Cura, one of the Spanish missions, marked "Dutch post before 1703," with no indication that the locality so marked is a purely conjectural site of a post of which there is no evidence to show the existence.

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Again, it is stated at page 48 of the British Case, that "In 1769 the Prefect of the Missions reported that a Dutchman had been eight years domiciled in the River Aguirre, and that Dutch families had been living at the mouth of the Curumo."

It is true that the Prefect states that a Dutchman had been domiciled with the Caribs more than eight years in the River Aguirre, "buying slaves from them" (B. C. IV, 20). He goes on to say:

"There were also others in the same traffic in Purney, Caura, and Parava, from where they used to send to Essequibo and Surinam parties of from twenty to fifty slaves, and they discontinued in alarm at the arrival of the Royal Commission in the Orinoco."

The fact that a Dutch slave trader was eight years in the Aguirre has no bearing upon the present case except to show that the Dutch trade was extended to territory confessedly Spanish. The Aguirre is a tributary of the Orinoco, far outside of the territory in dispute. Even "the extreme British claim" has not included the Aguirre, and the residence there of a Dutch slave trader has no more significance than such a residence in the neighborhood of Cumaná or Carácas. In fact, the mention of Caura, and other points in the heart of Spanish territory, shows that the slave traders were in the habit of carrying on this trade even in remote parts of the Spanish Colonies.

The other statement is more important. It is that "Dutch families had been living at the mouth of the Curumo," and the authority referred to is the letter of the Prefect. (B. C., IV., 23.)

The statement, if true, would have some bearing on the question whether there were any Dutch settlements in the Cuyuni basin. The Curumo empties into the Cuyuni. The mouth of the Curumo is, therefore, on the latter river. If Dutch "families" had been living there it would seem to imply something in the nature of a permanent settlement, especially when this cast was ingeniously given to the phrase by coupling with it a statement that a Dutchman had been domiciled eight years on the Aguirre.

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An examination of the passage in question, however, shows that the word "families," which gives all the significance to this citation, does not occur in the Spanish, but has been inadvertently introduced into the English translation. The Spanish phrase is "*otros Olandeses*," "other Dutchmen"; that is all. The British translation is "other Dutch families."

Of course the fact that Dutchmen were once at the mouth of the Curumo is a fact which, taken by itself, has no significance. In the course of the one hundred and sixty-six years, during which itinerant traders were roaming through the forest paths, buying Indian children, Spanish horses, annatto and balsam, no doubt Dutchmen were several times there. Sometimes an old negro trader of the Company was away as long as six months. But his wanderings during this period did not make a settlement. The Dutch did not settle in this region.

That which gives the statement its force, as the statement is made in the text of the British Case, is not that the persons in question were Dutchmen, but that they were Dutch *families*, for which, however, the text of the document cited gives no warrant.

The passage referred to by the British Case as its authority occurs in a description given in 1769 by the Prefect of the Missions of the destruction of the Dutch post at Quive Kuru in 1758 and of his connection therewith. The Prefect was in fact the same Fray Benito whose letter to Don Felix Fererras, the Acting Commandant at Orinoco, had led to Bonalde's expedition and the destruction of the post.

In reciting the events which took place eleven years before, he states that in the year 1758 he had informed the Commandant at Guayana of the post on the River Cuyuni. He states also that there were at the post two Dutch families settled, and that the Commandant sent a force to apprehend them. What gave rise to the statement that there were two Dutch families at the post was the fact that, in addition to the Outlier, his Assistant and the Company's slave, a half-breed woman was also captured.

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In the original letter of Fray Benito to the Commandant written in 1758, which led to the attack on the Dutch post, he refers to the fact that a party of Dutch slave traders was at the mouth of the Curumo (B. C. II, 145). It is to the same party that his letter of 1769 evidently has reference; and thus the Dutch "families" referred to in the British Case as living at the mouth of the Curumo turn out to be nothing more than an ordinary party of slave traders engaged in the prosecution of their business.

It is presumably upon the authority of these facts that the British Atlas has placed what looks like a town-site at the mouth of the Curumo, designated "Dutch Settlement 1750," for there is no other allusion to such a settlement in the evidence. In view of the evidence, it is difficult to find any explanation of the statement of the Atlas.

The British Case also states (p. 48), that in 1758 "Dutch traders were resident on the Tucupo (a branch of the Curumo), the Capi (Essequibo), and Paraman (Barama)."

This statement is founded on a passage in the same letter of Fray Benito to the Commandant in 1758 which led to the capture of the Dutch post. The letter does not say, however, as the text of the British Case would imply, that Dutch traders were resident at these points. The letter, as translated in the British appendix, is as follows:

> "We also know that numbers of Dutch, besides those who go to the Paragua [a tributary of the Caroni, entirely outside of the limits of the extreme British claim] remain in the places called Tucupo, Capi and Paraman to buy slaves."

The statement in the British Case that Dutch traders "were resident" at those points, is founded on the statement in the letter that Dutch slave-traders "remained" at these points. There is no doubt that they stopped at these points and at many others. It evidently has nothing to do with the question of settlement. Yet this is also placed on the British map as a "Dutch Residence."

Equally misleading is the description (also on p. 48) of the

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destruction of the Dutch post at Quive-Kuru. It is described in these terms:

"In 1758, as already mentioned, there occurred an attack by the Spaniards upon the Dutch on the Cuyuni, and two Dutchmen with their wives and a negro slave were carried off prisoners;"

and the marginal reference calls it "Cuyuni Raid."

The ordinary reader in considering this passage could hardly be blamed for supposing that there was a Dutch settlement in the Cuyuni which had been raided by the Spaniards. Such, as we know, is not the case.

What was attacked by Bonalde was the post of 1755, containing, according to the letter of Director-General Storm (B. C. II, 154), "the chief of the Post [Outlier], his second in command [Bylier], a slave of the company, and a half-bred woman with her children." This was the "attack by the Spaniards upon the Dutch on the Cuyuni," where "two Dutchmen with their wives and a negro slave were carried off prisoners."

The British Case then refers to the letter of Fray Benito detailing the rumors which he had heard about the presence of the Dutch, and the statements of the officers that the expedition started for the purpose of apprehending a Dutchman named Jacobs living on the Island of Curamacuru in the River Cuyuni. "Curamacuru" simply means "Curumo Creek" or "Curumo River," and the persons of whom the expeditions were in search were those whom the Prefect had heard were at the mouth of the Curumo. The case goes on to state that the Commander of the expedition "was unable to find any such island, but that he did ultimately discover and take prisoners two Dutchman living at a place called Cuiba," and it adds that "the position of Cuiba is not accurately known, but it is believed to be high up in the Cuyuni; the position of the Island of Curamacuru is also not accurately known, but it is stated on the authority of living witnesses that it is in the River Uruan and in the vicinity of the most advanced of the Spanish Missions." On the strength of these statements, two

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more "Dutch Residences" are marked on the British map. When a difference appears as to whether the post was at one or the other of two places, the British Atlas concludes that it was at both.

The witnesses now living who are referred to in this passage are one Miku, a Carib Indian, who made a deposition September 27, 1897, before Mr. McTurk, the zealous upholder of British interests on the Cuyuni, and Mr. McTurk himself, whose affidavit is dated November 1, in the same year. The depositions are given respectively in B. C. VII, 228 and 234.

The statements of these depositions will be considered first in reference to Cuiba.

It must be remembered that Cuiba or Quive-Kuru, where the post was situated, is only 45 miles or "15 hours" from Essequibo, and that this was the distance of the first post, as stated by Storm, in answer to the Company's inquiry (B. C., II, 180). Ignoring this evidence, however, the British Case seeks to establish for the past a position higher up the Cuyuni, in order to found upon it a more extended claim; in fact, the Atlas (Map 1, Br. Atlas), marks its "probable site" about at the mouth of the Acarabisi, some 80 miles above Quive-Kuru, and the Case, at another place (p. 47) states as to the site of the post:

> "It is difficult to fix its exact situation, but an examination of all the evidence upon the subject points to a position somewhere between the . . . mouth of the Curumo and that of the Acarabisi."

It is largely for the purpose of tending to prove the supposed advanced position of the Dutch post of 1755 that the affidavits referred to are introduced into the case.

Miku says in his affidavit:

> "I am a Carib Indian, and am at present living at Kalacoon."

Where Miku was living "at present" is the Government station in the Essequibo, on the point between that river and the Massaruni, where Mr. McTurk also resides and discharges his

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magisterial and other duties, among which is the appointment of Indian Captains (B. C. VII, 337).

Miku goes on to say:

"I knew a place called Cuiba; it is a creek high up in the Cuyuni, about two days' travelling above the mouth of the Uruan. The land is good to make a place; the land is high at the mouth of the creek, but there is low land behind. I do not know any other place called Cuiba on the River Cuyuni."

Mr. McTurk in his affidavit says:

"I am intimately acquainted with the River Cuyuni as far up as the junction with the River Uruan, having within the last sixteen years ascended it on upwards of twenty occasions. I am informed that there is a place called Cuiba situate on the right bank of the river beyond Uruan, but I have never actually been there. I know a creek called Querri-Kuru, which flows into the River Cuyuni on its left bank; it is the same creek as the one incorrectly marked Yanekurru on the map; the creek Yanekuri is the next creek marked on the map lower down than the Querri-Kuru, and is on the map incorrectly called Quive-Kuru. There is no place of the name of Quive-Kuru, and I do not believe that is the same place as Cuiba, as has been suggested. So far as I have been able to discover, and I have made many inquiries, there is no place called Quiba on the Cuyuni, other than the one before mentioned."

Upon these affidavits the British Case makes the statement:

"The positition of Cuiba is not accurately known, but it is believed to be high up in the Cuyuni."

This statement is somewhat indefinite when speaking of a river three hundred miles in length; and incidentally, as far as the position of this post is concerned, it draws a misleading conclusion from the affidavit of Miku. If Cuiba is situated, as Miku says, two days' traveling above the mouth of the Uruan, the expedition of Bonalde, which came from the mouth of the Uruan and sailed for nine days down the river, and never went above the Uruan at all, could not have destroyed a post at that point.

Notwithstanding the fact that Bonalde went *down* the Cuyuni from the Uruan to reach the Dutch post in 1758, the British Case, on the strength of Miku's statement that he knew a Cuiba two

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days' journey on the right bank of the Cuyuni, above the Uruan, has inferred that the Postholder, in stating that his post was at Cuiba, meant a post on Miku's site, and accordingly has marked on the map at that point one of its numerous town sites, designated, as usual, "Dutch Residence." One thing is certain, and that is that the Postholder referred to the post that was raided. If he used the name Cuiba, he used it to designate that post. It cannot by any possibility be inferred that at some point where it was impossible for the post to be situated, which happens to bear, according to Miku, the name of Cuiba, another post should have existed to which the Postholder intended to refer.

As to Mr. McTurk's inability to find out any place of the name of Cuiba on the Cuyuni, and to the variation which he proposes in the name of the Quive-Kuru, the only answer that need be made is that in the Atlas of the British Case there are seven maps based upon actual surveys from 1840 to 1885, all of them by high British Government officials, in which the name of the stream is given as Quive-Kuru, while the alleged name "Querri Kuru" appears for the first time in a British map in the Atlas prepared for this Tribunal; and, secondly, that the position of Quive-Kuru corresponds with the formal and official statement of the distance from Essequibo made by Director-General Storm, in direct reply to an equally formal and official inquiry of the West India Company, addressed to him for the purpose of determining the action to be taken by the Dutch Government in its representations to Spain. As the post was on the Cuyuni 15 hours, or 45 miles from Essequibo, there is not much doubt as to its locality, whether the place is called Cuiba, Quiva, or Quive Creek, or Quive-Kuru, or Querri-Kuru. The fact that the Postholder said it was at Cuiba, is certainly no warrant for placing on the map another Post called a "Dutch Residence," 250 miles up from Essequibo.

Second, as to the supposed Island of Curamacuru. The termination "*cura*," or "*kuru*," seen in Amakuru, Quive-Kuru, Yane-kuru, and numerous other names of this district, means

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"creek." "Curamacuru" means "Curumo Creek," or "Curumo River."

Under these circumstances, it is hardly necessary to obtain an affidavit from Mr. McTurk that "there is no island of that name in the Cuyuni."

The fact that Miku, in September, deposed that there was such an island in the Uruan, and that Mr. McTurk, in November, deposed that he was informed and believed that such an island existed at the same point is entirely beside the question.

In fact, as the locality referred to in the rumors mentioned by the Prefect while writing at Suay, many leagues from the scene of operations, was stated in his letter, though erroneously, to be "the mouth of the Curumo," and the orders of Ferreras to go to Curamacuru were based upon the Prefect's information, the proof of identity of the two names is complete.

The reference in the British Case (p. 52) to the second post is equally misleading. It says:

"In 1767 the Cuyuni Post is returned as existing with a Postholder and two assistants; but there appears to have been a difficulty in finding suitable officers for this Post, for in 1785, mention is made of 'the old Post in Cuyuni, which is at present still without a Postholder,' and a man was proposed for the place."

It might reasonably be inferred from this statement that the Cuyuni post of 1767 was still in existence in 1785, but that there was a momentary difficulty in finding suitable officers for it, and that the difficulty was overcome by the selection of a Postholder. The fact, however, was that in 1769 the position of Postholder in Cuyuni was vacant (B. C. VII, 167), and that the Byliers, Jan van Wittinge and Gerrit van Leeuwen, were at the post; that the senior Bylier, Van Wittinge, in that year, in apprehension of a threatened attack from the Spaniards, moved the post down the river, greatly to the dispaproval of the Dutch Commandeur; that in 1771 the Byliers, Van Wittinge and Van Leeuwen, were still there without a Postholder (B. C. VII, 168); that in that year Van

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Wittinge died at his post (*Id.*, 177); that Van Leeuwen at the same time disappeared from the rolls, and that this constitutes the last mention of an existing post in Cuyuni. All this may be found in the very rolls which are given in the Appendix to the British Case, and which are referred to in that Case as evidence of the only fact in reference to the last Cuyuni post, which the text of the Case mentions.

The reference to 1785, which seems to imply that the post was still in existence, is shown by the evidence to be as follows: in that year, the Court of Policy state (B. C. V, 30–31) that one Arnoldus Dyk had arrived in the colony, claiming he had been appointed by the Company Postholder at Moruka, but that the Court had already appointed an old employee named Bartholi to that place. The Court then proceed to say:

"That, in order not to leave this A. Dyk entirely without employ, the Court would suggest to his Excellency's consideration whether it would not be best to place this Arnoldus Dyk at the old Post in Cuyuni, which is at present still without a Postholder."

Dyk never was appointed, and nothing further was heard of the post.

The facts in this, as in many other cases commented upon in the British Case, are so well known that it is impossible to suppose that the British Case intended to represent that the post in Cuyuni existed later than 1772. The only reason for mentioning them here is to guard against the wrong conclusion that might, with considerable reason, be drawn from the manner of statement adopted in the British Case, especially in view of the statement which follows, to this effect, that

"The re-establishment of the Cuyuni Post was followed by a series of rumours as to attempts upon it by the Spaniards, and though these rumours were without foundation, yet certain other acts of the Spanish authorities about this time led the Dutch again to make a formal Remonstrance to the Court of Madrid."

It might be supposed that both this statement had reference to a re-established post, or a post whose existence was still con-

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tinued in 1785. The re-establishment of the post, however, which is spoken of is the re-establishment in 1766, as to the attacks upon which the Dutch are supposed to have made their second Remonstrance—which, however, can hardly be called a remonstrance—occurred to the marginal reference, in 1769.

Another illustration of the infelicity of statement of the British Case is to be found on page 44, where it is said, referring to rumors, in 1754, of projected attacks of the Spanish:

"At this time it must be noted that the Spaniards had no knowledge whatever of the localities into which it was supposed they were about to penetrate. Their only information appears to have been derived from one Nicolas Collaert, a Dutch deserter, who had drawn for the Spanish Colonel a map of the River Cuyuni, ostensibly for the purposes of the Boundary Commission between Spain and Portugal."

The above is a statement, as plain as words can make it, that the Spaniards were absolutely ignorant—"had no knowledge whatever"—of the locality, not into which they were about to penetrate, but into which it was supposed they were about to penetrate. It is not even stated as a fact that the Spaniards had any idea of penetrating into the locality, but only that the Dutch supposed that they were about to do so. The locality was the valley of the River Cuyuni.

The only authority for this sweeping statement as to the ignorance of the Spaniards, as appears from the reference in the text of the case, is a statement made in a report of the Director-General, October 12, 1764 (B. C. II, 98), as follows:

"Moreover, the Emissary had in Orinoco conversed with one Nicholas Collaert, who fled from here some years ago, who had related to him that the Colonel aforesaid had caused him to be brought to Orinoco, and had let him make to the best of his ability a drawing of the course of the River Cuyuni."

The statement of the Director-General simply is that he had heard from one Collaert, a Dutch fugitive in Orinoco, that a

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Spanish Colonel "had let him make to the best of his ability a drawing of the course of the River Cuyuni."

As to the question how much or how little information the Spanish Boundary Commission may have had besides the map of Collaert, there is no evidence. The fact that the Spanish Colonel had let Collaert make a map for him certainly is no ground for the inference that the Collaert map was all they had; and the inference from the Director-General's letter that "the Spaniards had no knowledge whatever of the Cuyuni" is left entirely destitute of foundation.

One great source of confusion in the British Case, to which allusion has already been made, is the use of the words "Cuyuni" and "Massaruni" in speaking of the extension of the Essequibo settlements. Nowhere is it indicated in the British Case that these settlements, in the Dutch period, stopped absolutely at the falls, and that the falls in question are only ten or twelve miles from the mouths of the rivers. The reader of that Case would be led to infer, from the language used, that plantation extended for an indefinite and certainly very considerable distance on these rivers. The fact that the rivers themselves are, in the one case three hundred miles, and in the other two hundred and fifty miles long, gives to a general statement made in regard to alleged settlements upon their banks a meaning not apparently consistent with the fact that these settlements extended only over a space of ten or twelve miles at their respective mouths.

Thus, when it says (p. 29) that there is evidence "from 1681 onwards, that the area of actual plantation extended along the rivers Cuyuni, Massaruni and Upper Essequibo," it might reasonably be supposed that some considerable part of the three hundred miles of the course of the rivers was meant, or at least some part greater than the twelve-mile stretch at their mouths.

The error is strengthened and magnified by the statement immediately following:

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"But the energies of the Dutch were not confined to the area of actual plantation. Hunting and fishing were carried on, and Posts established in various parts of the territory in question."

There is very little evidence of hunting or fishing outside of the immediate neighborhood of Essequibo or its adjoining coast, although wild hog meat and fish were bought in considerable quantities from the Indians.

As to the posts, the only posts during the Dutch period were the posts of Demerara and Mahaicony, to the eastward; the post of Arinda, high up on the Essequibo; the so-called "posts in Cuyuni," and the posts at Pomeroon afterwards moved to Wacupo and Moruka.

Again on page 32, the British Case states:

"Their plantations and settlements lined the banks of the Essequibo, Massaruni, and Cuyuni for some distance from the junction of the three rivers."

This statement is literally true. The plantations and settlements did line the banks of the Cuyuni for some distance from the junction; but it could hardly be fairly inferred from the statement that the "some distance" referred to was ten or twelve miles in a river of 300 miles. It may reasonably be said of the suggestion that it is unintentionally misleading.

Again, the British Case states (p. 33) that in 1722 the Engineer Saincterre reported that:

"The ground was even better above in the Rivers Essequibo, Massaruni, and Cuyuni than below, but that the rocks, falls and islands had, up to that date, prevented Europeans from establishing sugar plantations there;"

and it adds:

"In 1723–24 further plantations of coffee and cassava were established in Cuyuni."

The natural inference from these statements is that while the rocks, falls and islands prevented the establishment of sugar plantations, they did not prevent plantations of coffee and cassava. The fact, however, is, and the Case might with accuracy have said, that not only up to that date, but to the very end of the

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colony the rocks, falls and islands prevented not only sugar plantations, but all other plantations above the point where the falls were situated. The plantations of coffee and cassava to which the Case refers were plantations made in the short stretch of the river, at the falls or immediately below.

The misleading character of the above statements is heightened by the statement made shortly after (p. 34):

"In 1730, there were coffee plantations both above and below the falls in Cuyuni. Experiments were also made in the planting of cocoa and indigo. There was a plantation, in 1732, upon Batavia, an island in the Cuyuni, and, in 1733, the Court of Policy reported that coffee and cocoa were being cultivated to the utmost extent that the number of slaves would permit."

It is true that the Company had two plantations at the lowest fall of the Cuyuni, one above and the other below that fall, and both in its immediate neighborhood. The Island of Batavia, in the Cuyuni, was an island below the lowest fall and not five miles from the mouth of the Massaruni. It may be true that the cultivation of coffee and cocoa was the utmost which the number of slaves would permit; but it was not cultivation on either the Cuyuni or the Massaruni above the falls.

The same may be said of the novel kind of settlement which was established, in 1738, on an island in the Cuyuni; that is, the settlement of the half-free creoles. This island was below the falls.

It is stated on p. 63 of the British Case that a post existed in Massaruni. From this it might be inferred that the Dutch established some sort of occupation at the upper part of the river. The post, however, was situated at the very mouth of the Massaruni, on the point where it empties into the Essequibo, being the present site of the British penal settlement (B. C. VI, 109–111).

Again it is stated (p. 36):

"Land, however, continued to be taken up there. In 1745 a grant was made in Cuyuni and another applied for in Massaruni, and in 1754 and 1757

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grants were made in Massaruni. In 1756 a colonist of the name of Couvreur is mentioned as living on his plantation obviously some way up the Massauruni. There was a transfer of land in Massaruni in 1759, and in Massaruni and Cuyuni in 1761. There was also a new grant in Cuyuni in 1761."

All the above grants were either at or below the falls.

It is stated in the British Case (p. 56):

"About this time (1770) plantation was rapidly extending to the west of Essequibo."

This statement cannot mean, though it would seem to state, that plantation was extending in the interior. It only refers to the west *bank* of the Essequibo. There is no evidence to show extension in other directions.

It should be added that the ambiguity shown by the expressions in the British Case in reference to plantation on the Cuyuni and Massaruni during the Dutch period is avoided in the statement made on page 65, in reference to the condition of the country in 1831, during the British period. Of this the Case says:

"Upon the Essequibo, the Massaruni, and the Cuyuni, plantation was not extended at this period, the soil above the estuary not being sufficiently fertile. But in 1831 the country was described as settled to the falls of the three branches of the Essequibo, namely, the Essequibo, Massaruni and Cuyuni."

The fact is that the citation given is an accurate statement as to the limits of settlement on the Cuyuni and Massaruni, not only in 1831, but during the entire period of the Dutch colony.

(4.) Coast Territory.

The question of settlement in the coast territory, otherwise known as the Barima—Waini district, is narrowed down to a discussion of three occurrences: The establishment of Beekman's "shelter" in 1683; the Rosen incident in 1766, and the La Riviere incident in 1768. During the whole of the Dutch period of over a century and a half there is nothing else in the coast territory to be considered in reference to settlement. There

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is no other evidence of settlement than that which is contained in these three episodes.

The attempt has been made to supply the entire want of evidence on this head in the archives by a mass of so-called evidence consisting of depositions made since the Treaty of Arbitration was concluded in reference to "traces" of earlier settlements and to Indian "traditions." The weight to be attached to such evidence, made at least a century after the facts to which it relates, is very slight, especially that as to Indian traditions, which cannot be dignified by the name of evidence at all. As to the traces of previous settlement, these may be referred partly to the three incidents which we are about to consider, and partly to the fact, which is well established, of the presence in the territory during the earlier period of others besides the Dutch. If traces of cultivation belonging to a remote period are to be found at any particular spot in this territory, they cannot be assumed to be evidences of Dutch settlement if others than Dutchmen are known to have been there. Such being the case, our investigation would properly begin with the early relations maintained by the Spaniards and the French with this district.

The territory which is under consideration is the territory north of the Imataka Ridge and east of the Schomburgk line, extending as far as the coast on the north and the Moruka on the east.

Part of this district, about the upper Barima and within the British claim, is by Schomburgk's winding line, almost enclosed in Venezuelan territory. It adjoins the Savanna region of the Spanish settlements, the headwaters of the Barima being within less than ten miles of those of the tributaries of the Curumo. There appear to have been trails which afforded passage to the Indians from the Spanish settlements to and from the upper Barima region, but there is no suggestion that the region ever contained a settlement by the Dutch. There is nothing in the Dutch records that even points to trade, to hunting, to transit, or to anything else in the upper course of the Barima and Waini.

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The coast territory, which includes the region watered by the Waini, Barima, and Amacura, and through which the two former rivers run in a course parallel to the coast line, forming part of the series of inland waterways so much referred to, is one of the most vital points of discussion in the present controversy, and upon no part of its case does the British Government lay greater stress. The obvious reason for this is the fact that the Barima and Amacura empty into the Orinoco and form a part of its river system. Barima Point, at the western extremity of this territory, is a marked headland, having an important bearing, as the merest inspection of the map will show, on the control of the lower Orinoco, and in particular on its great ship channel or *Boca de Navios*, which enters the sea at this point.

An additoual importance has been given during a very recent period to the Barima-Waini region. Within the last fifteen years discoveries of extensive gold deposits have been made in the Barama and of the Barima. The discovery of these mines, which have been extensively worked, lends peculiar importance to the question of disputed possession in this district.

Before taking up the question of settlement in the coast territory, it is necessary to give a brief outline of the trade conditions prevailing there in the Spanish-Dutch period, chiefly for the purpose of showing by whom it was most frequented, and who probably settled there, in case it should appear that remnants of otherwise untraceable settlements are to be found.

The Spanish were familiar with the Barima at a very early period. The expeditions of Ordaz and Acosta in 1530 and of the Lieutenant of Ordaz, Herrera, in 1537, entered the Orinoco for purposes of exploration and penetrated the country, some of them to a high point on the river, made the Spaniards familiar from a very early period with the territory about its mouth. At a later period, when Berrio became Governor of Guayana, in 1586, the numerous voyages made between Trinidad and Santo Thome necessarily imply an intimate knowledge of the mouth of the

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Orinoco; while the frequent practice of going eastward to Essequibo and other points for the purpose of getting food, shows that the navigation of the intermediate district must have been familiar.

These movements of the Spanish about the coast may be briefly referred to. Thus, De Laet, in his description of the West Indies, published in 1625, says (V C., p. 42):

"The Spaniards had there [that is, in the Essequibo] some people in the year 1591."

In 1596, Keymis, while asserting that "further to the eastward than Dessekebe [Essequibo] no Spaniard ever travelled," reports:

"In this river, which wee now call Devoritia, the Spaniards doe intend to build them a towne."

Again, Masham, who accompanied Captain Leonard Berrie, the Commander of Raleigh's expedition in 1597, says (V. C. p. 42) that he learned from an Indian that in the Essequibo "there were some 300 Spaniards, which for the most part now are destroyed and dead," and he adds:

"It was reported that the Spaniardes were gonne out of Desekebe, which was not so. . . . The next night wee had newes brought . . . that there were tenne canoas of Spaniardes in the mouth of Coritine . . . who went along the coast to buy bread and other victuals for them in Orenoque [Orinoco], Marowgo, [Moruka] and Desekebe [Essequibo]."

The constant movement and transit of Spaniards between the Orinoco and points to the eastward, referred to by so many authorities, implies of necessity a knowledge of the district which was afterwards generally known as Barima. The strong equatorial ocean current, sweeping to the westward along the coast of Guiana, its strength reinforced by trade-winds, made an easterly journey by sea a peculiarly difficult matter. To avoid it, the natives used the deep and landlocked waters of the Barima and the Waini, where they could take advantage both of tide and

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river-current. To suppose that the Spaniards, depending upon this coast and its rivers for the very necessaries of existence, and visiting it frequently to obtain them, did not know of the interior passages, is to suppose that they were destitute of the most ordinary faculties.

When Domingo de Vera y Ybarguen, Maestro de Campo of Governor Antonio de Berrio, returned from Spain in 1595, he proceeded to Trinidad. He states, however (B. C. I, 15), that on his way to Trinidad,

"Before reaching the principal port, I landed at some friendly Indian villages, some 10 leagues from the port, and spoke to the natives, who entertained me well. I left with them 66 men, as well as a man with a good knowledge of the country, whom I brought from Spain with goods for barter, to go to the place where the Governor, Don Antonio de Verrio, was, and tell the natives of the country of my arrival, and to bring me boats to take all my people across to El Dorado."

As Antonio de Berrio was at this time at Santo Thome, the place where Vera left his party must have been near the mouth of the Barima, from which point they were to make their way upwards.

Not only this, but Vera himself went to the Essequibo two years later. In the same letter, containing his report to the King, of the expedition which had come out under his command, he says, speaking of the year 1597, that he "then went to the River Essequibo" (B. C., I, 17).

In 1613 occurred the celebrated expedition to the Corentin, which destroyed the Dutch settlement on that river. The expedition was commanded by Muxica, the Lieutenant of Guayana, under the Governor-General, Don Juan Tostado, at that time Lieut.-General of Trinidad fitted out a force under Captain Cortes, "that they might go on his Majesty's service to the assistance of the Lieutenant of Guayana, in whose district certain Dutch Lutherans, rebels against the Royal Crown were settled, and make war upon them and dislodge them." The detailed report of this

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expedition, dated February 16, 1614, is given in B. C. I, 31. Cortes, with the Trinidad detachment, was met by Muxica, with the Guayana detachment from Santo Thome, at the mouth of the river Vauruma (Pomeroon) (B. C I, 32), a point which he was most likely to reach by passing through Barima.

In 1608 Unton Fisher, an Englishman whom Harcourt had left on the Marowin, reports (V. C, p. 43) that the Spaniards have "cleare left Dissikeebe, and not a Spaniard there," showing that the fact of their having been there was well known; and from the remarkable testimony contained in the letter of the Duke of Lerma, of February 2, 1615 (V. C. II, 263-4), enclosing a report of the Royal agent in the Netherlands, it appears that there were at Essequibo "some persons, from twelve to fifteen Spaniards, who there till the soil to raise the root of *Casavia*, from which bread is made for the Governor of Trinidad and Orinoco, Don Fernando de Borrea."

The above citations show all that is attempted to be shown, namely, that the Spaniards must have been familiar with the coast region between the Orinoco and Essequibo, and were accustomed to use the inland water-communication to the Pomeroon through the Waini and the Barima, at a very early period.

We have, however, still more exact testimony from Raleigh himself, who, writing in 1595 (Raleigh, Discoverie of Guiana, Lond. 1596, pp. 33-35), says:

"Among manie other trades those *Spaniards* used in *Canoas* to passe to the rivers of *Barema, Pawroma* and *Dissiquebe,* which are on the south side of the mouth of *Orenoque,* and there buie women and children from the *Canibals,* which are of that barbarous nature, as they will for 3 or 4 hatchets sell the sonnes and daughters of their owne brethren and sisters, and for somewhat more even their own daughters: heerof the Spaniards make great profit, for buying a maid of 12 or 13 yeares for three or fower hatchets, they sell them againe at *Marguerita* in the west Indies for 50 and 100 pesoes which is so many crownes.

"The master of my ship *Jo. Douglas* tooke one of the Canoas which came loden from thence with people to be sold. . . . They also trade

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in those rivers for bread of *Cassavi*, of which they buy an hundred pound weight for a knife, and sell it at *Marguerita* for ten pesoes. They also recover [get] great store of cotten, brasill wood, and those beds which they call *Hamacas* or brasill beds, wherein in hot countries all the Spaniards use to lie commonlie, and in no other, neither did we ourselves while we were there."

No less important and equally precise is the testimony of Keymis, Raleigh's capable and devoted follower, to the presence of the Spaniards in this district. Keymis relates how he found the Spaniards settled, with their forts, in the Orinoco. In his "Relation,"* Keymis says ("Relation," Sig. C, 2):

"Now the Indians of *Moruga* being chased from their dwellings, do seeke by all means possible, to accorde all the Nations in one, so to invade the *Arwaccas*, who were guides to the Spaniards, in showing their townes, and betraying them."

The above citation is extremely significant. It shows that the Spaniards were from the earliest period, as they were later, in more modern times, the friends of the Arawaks.

With the assistance of the Arawaks, the Spaniards had invaded the coast territory to the very eastern extremity of it in the neighborhood of Moruka Creek, and had conquered and driven away the Indians of that neighborhood "from their dwellings,"—doubtless the Caribs, who naturally resented the intrusion and became thereafter the sworn foes of Spain, seeking to bring about an alliance of all the tribes to punish the Arawaks for their services to the European invaders.

These events, recorded on the spot by a most intelligent English observer, took place at a time when no Dutchman had ever set foot in Guiana. They indicate the original control of the natives to the very creek of Moruka by the Spaniards.

In consequence of these events the Coast Indians became hostile, not only to the Arawaks, but to the Spaniards. Thus, Wareo,

* "A Relation of the second Voyage to Guiana. Performed and written in the yeare 1596. By Lawrence Kemys, Gent. Imprinted at London by Thomas Dawson . . . 1596."

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an Indian chief (whose name strongly suggests the Warows) from the region of the river Moruka, said to Keymis ("Relation," Sig. B, 3):

"The nations farre and neere were all agreed to joyne with us (English) and by all meanes possible to assist us in expelling and rooting out the *Spaniards* from all parts of the land."

But the Spaniards not only conquered Barima and Moruka. They utilized their conquests for purposes of trade. In this Keymis's narrative confirms Raleigh. He says ("Relation," Sig. C, 3):

". . . our intelligencer returned & informed us that ten Spaniards were lately gone with much trade to *Barima*, wher these Indians dwelt, to buy *Cassava* bread, and that within one day two other *Canoas* of Spaniards were appointed to come by the river *Amana* to *Carapana* his porte."

Coming down to the period following the cession to the Dutch, in 1648, we find that during the second half of the seventeenth century, the French as well as the Spanish, were actively engaged in trading with the Indians in Barima. In 1683 this trade was made the subject of querulous comment by the Commandeur at Essequibo, Abraham Beekman, in his reports to the Company. In his letter of January 8, 1683 (V. C. II, 44), he says of the Indians:

"For these people, like irrational animals, listen to no argument. Inducements of every kind—good offices, wares—have no effect upon them. They meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade *which the French from the islands carry on there.*"

In 1685 he again refers to the activity of the French in Barima:

"The French in the Barima likewise come even to the Upper Cuyuni" (V. C. II, 52).

In 1686 he states, speaking of the country back of the Barima:

"The French scour the country up there and buy up everything" (V. C. II, 59).

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Three years later, the French, as already related, aided by the Caribs of Barima, attacked the second Dutch colony on the Pomeroon, making their way in canoes from Barima and Waini to the Moruka, and utterly destroyed the colony, and then, returning to the Barima, fortified themselves in that river (V. C. II, 59–62).

In 1689 Beekman wrote (V. C. II, 59): "The French are daily sojourning in Barima with the Caribs"; and in a letter of the same year he said (V. C. II, 62): "The French are making a strong-house in Barima."

In 1695 he wrote:

"We have been kept here in continuous alarm, since at various times we have had tidings that some French, aided by Caribs from Barima, are staying in the mouth of the River Pomeroon, who say that they will come here to visit us" (V. C. II, 64).

This fort or stronghold of the French in Barima is a fact of great importance in the case. Its position is not known, but the fact is known from these two allusions. The alleged remains of a fort in Barima have been referred to and commented on upon many occasions, and an assumption, totally unwarranted, has been made, especially Schomburgk, that the fort indicated by the remains was a Dutch fort. There is no evidence in the history of the Dutch colony that the Dutch ever had a fort in Barima. It is impossible that a Dutch fort should have existed at any time after 1648 and not have been mentioned. It is impossible that, had it existed, it should not have been mentioned many times. No doubt the Dutch landed on the lower Orinoco in 1637 and 1638, when they made their attacks on Santo Thome and Trinidad during the Thirty Years' War, and it is possible that during that campaign they put up a temporary work; but if there was any such work, it was a mere incident of a military campaign. Any remains that may have been found in modern times are doubtless the remains of the old French fort of 1689. If referable in any way to the Dutch, they must have been connected with the cam-

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paign of 1637, which lasted from July to September, and then came entirely to an end.

Besides the French, from the islands, traders from Surinam and other Dutch settlements not under the direction of the West India Company also visited the Barima and traded there. Of one of them, Biscop, the commandeur, reports, in 1683, that the Barima "has been navigated as many as two or three times by Gabriel Biscop and exploited with great success, much to the prejudice of the Company" (V. C. II, 45).

But however extensive the connection in the sixteenth century of the French and Surinam rovers was with trade in Barima, the principal trade there was that conducted by Spaniards from the Orinoco during the whole period. This was a continuation of that current of traffic to which Raleigh and Keymis had called special attention in the earlier period, before the Dutch were even heard of in Guayana. The trade relations between the two colonies were first started by the Dutch in 1673, when the Commandeur of Essequibo "sent some wares to Orinoco for the purpose of trade" (V. C. II, 36). From this date the subject of trade with the Orinoco is mentioned so frequently and so constantly that it is unnecessary to point to any particular communication. It became one of the features of the life of the colony, and remained so during the next century, except for short times when it was interrupted either by war or by the enforcement of narrow commercial regulations on one side or the other. It was first really started about 1679 (V. C. II, 38), and being prohibited by Spanish law, it was carried on only by the connivance of the Governor of Guayana. Such were the inconveniences of the trade when carried on in the Orinoco, by reason of its contraband character, and such were the losses and penalties it involved, that the Company at one time put a stop to it, being of the opinion that "the Company bears all the expenses and burdens, and that others help themselves to the profits" (V. C. II, 50). The field was so tempting, however, that the trade was revived, but the effort

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was made to have it carried on by the Spaniards at Essequibo, rather than by the Dutch at Orinoco, so that the actual traffic might be done at the former point. The Barima was still the only route by which the traffic was carried on. As time went on, the Dutch withdrew more and more from the intercolonial trade, leaving it more and more in the hands of the Spaniards, and finally, in 1761, the West India Company concluded that it was "more profitable for the Company, to direct this trade into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards" (V. C. II, 146). The trade still continued active, but was thereafter entirely carried on by the Spaniards. The post of Pomeroon or Moruka became the port of entry for all this trade to the Essequibo. It was the frontier of the Dutch colony on this side, and as the Spanish trade grew and duties were imposed, it became the custom house of the Dutch colony, which necessarily would be established on the frontier.

It, therefore, appears that, as far as trade conditions were concerned, the Spaniards had been in the Barima from a time long prior to the advent of the Dutch in that neighborhood; that they carried on trade there continuously to the end of the eighteenth century, and that the intercolonial trade was chiefly carried on by the Spaniards through the Barima district, the Dutch authorities themselves favoring this policy.

It also appears that early in this period and for a considerable series of years, the French were active traders in the Barima and in more or less constant occupation of points in the district, at one of which they built a fort.

Finally, it appears that the Surinam traders, who were independent of the Dutch West India Company and its competitors in trade, diverted to themselves a large part of the Barima traffic which otherwise would have fallen to the Essequibo colonists.

Having said so much in reference to the general trade conditions

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of the Barima, the question is to what, if any, extent actual settlements of the Dutch existed in that region.

The first matter to be considered is the significance, or rather the insignificance, of Beekman' rest-house of 1683.

The first reference to this subject is in a report of the Commandeur of Essequibo, December 25, 1683 (B. C. I, 185), in which he said:

"I have caused one of the Company's servants to reside in Barima, as much annatto and letter-wood is obtainable there, and it lies near to Pomaroon."

He added:

"I wish your Honours would take possession of that river as well" (meaning the Barima), "which has been done by me provisionally, in order to see what revenue it will yield, since I am of opinion that the Honourable Company has the right to trade and traffic there in an open river as much as other private persons."

In March, 1684, he stated (B. C. I, 186):

"Pomeroon begins annually to deliver much and good annatto, and much was supplied from Barima, as appears from the inclosed list. From this their Honours will see how much has been procured and brought to the fort by all the Postholders."

The Commandeur added that Biscop and other interlopers spoil the trade; that they overrun the land right up to the Cuyuni; that

"In order somewhat to check this, I have caused a small station to be made at Barima, and Abraham Baudaart, who is there" [in Pomeroon] "as Postholder in place of Daniel Galle, who is going home, shall occasionally visit those places and encourage the Caribs to trade in annatto and letter-wood, which the French even from the islands in the river frequently come with their vessels to fetch. I submit, therefore, under correction, that it would not be inequitable for the Honourable West India Company to take possession of the River Barima in order to acquire the trade aforesaid, and to command the erection there of a permanent place for a Postholder" (B. C. I, 186).

It might seem from the context that Baudaart was at Barima as Postholder; but this is not the fact. He was the Postholder of

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Pomeroon, as is shown in the letter of August 18, 1684 (B. C. I, 187), where he is spoken of as "Abraham Baudaart, Postholder in Pomaroon." The British Case (page 31, line 3) recognizes the correctness of this interpretation.

The two letters above mentioned of Commandeur Beekman have been cited occasionally as showing at this early period something in the nature of settlement or control of the Pomeroon. Their bearing upon the question of control will be considered later. Here the only question is of actual settlement. In the first letter he says that he has caused one of the Company's servants to reside in Barima, and speaks of it as being close by Pomeroon; that is, in December, 1683; and in the following March he complains of the Surinam traders, and says that, in order to check this, he has caused a small station to be made at Barima, and that Baudaart, the Postholder, "shall occasionally visit those places and encourage the Caribs to trade." He also speaks of this in connection with a larger plan, which he recommends to the Company, to take over the Barima, and to which he refers in both letters.

Beekman's suggestion as to taking possession of the river, reiterated in the second letter, shows that up to then no possession had been taken. The two letters together also show that the Company's servant whom he had caused in December, 1683, to reside in Barima, which was stated by him to be a provisional taking possession, subject of course to the Company's approval, did not continue his residence. What it amounted to or what replaced it is explained in the following letter, namely, that a rest-hut or shelter had been put up in the district, and that the Outlier in Pomeroon was to go there occasionally to encourage the Caribs to trade.

Beekman's two letters were answered by the Company on August 24, 1684 (V. C. II, 48). The answer was an angry and reproachful disapproval of nearly every proposition which Beekman had made to them, and was full of caustic comments upon his

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management of the colony. His large scheme about the Barima the Company treated with silent contempt, and it only informed him that the trade with the Orinoco must be stopped, intimating that the corrupt way in which it had been managed had deprived the Company of the profits to which it was entitled.

The Company, which was always much more cautious than the Commandeur about making claims to that to which it was not entitled, doubtless had in mind the fact that the charter of 1674, the third which had been given by the Dutch Government to a West India Company, specified as the only places in America under the control of the Company Essequibo and Pomeroon, and that consequently it had no right to the Barima, and that if the Barima was taken into possession by the Dutch it would still not be acquired by the Company. Its extreme dissatisfaction with the management of the Orinoco trade, one of the principal uses to which Beekman had put the Barima, was also so great that it was in no mood to prosecute any schemes of territorial acquisition in that direction. For the next twenty-eight years nothing is heard of Barima in the Dutch records.

From the above it appears that no settlement was made in the Barima in the seventeenth century by the Dutch. The temporary employment of one of the Company's servants there, referred to in the letter of December 25, 1683, already quoted, certainly was not such a settlement.

The only question that remains to be considered is as to the significance of the erection of the shelter spoken of in the second letter. Except two occurrences in 1766 and 1768, this shelter is the very slight foundation for the only claim to Dutch settlement in Barima.

The words used in the Dutch text, which have been translated "a small shelter" in the Venezuelan Case (V. C. II, 45), and, very inaccurately, "a small station" in the British Case (B. C. I, 186) are "*een kleijn pleijsterhuijsje.*" "*Huijsje*" is the diminutive of "*huijs,*" meaning "house," and "*pleijsterhuijsje*" therefore

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means "a little house or hut." A "*pleijsterhuijsje*" is therefore a "rest hut." The insignificance of the structure is additionally enforced by the adjective "*kleijn*," meaning "little." It was, therefore, "a little rest-hut."

Adriaan van Berkel, writing of these Guiana colonies only a few years before (1672), gives us a vivid description of one (p. 16). He is speaking of a trip down the Berbice. "This night for the first time I slept on land, in the forest, with my hammock made fast to two trees. Just before I was ready to go to rest our slaves had built for me a *pleijsterhuijsje*—so called by both Christians and Indians—at the place where the hammock was to be stretched. There are four posts, the front ones somewhat higher than the rear ones, covered over with a roof of leaves, leaves uncommonly large, being usually 4 or 5 feet long and some 2 feet broad. Neither sun nor rain can here vex one, for the leaves lie so close upon each other that not even the rays of that great luminary can penetrate. Such *pleijsterhuijsjes* one sees along the entire river; and one has them built in a moment wherever one will, for an Indian is like the turtle—everywhere at home."

The uses of a "*pleijsterhuijsje*," namely, for a night shelter in the tropical climate, are clearly shown by the Journal of the Mining Engineer Hildebrandt (B. C. II, 36–40).

Thus, there is an entry "Sunday, January 14":

"I at once sent two negroes with six Indians to fetch thatch for the making of a station [*pleijsterhuijsje*], so as to keep dry at night."

Also

"Monday, January 15.—Began having another station [*een ander pleijsterhuijsje*] made up on the mountain for me and my people."

On Thursday, July 18, the writer of the Journal again spends the night in a "station" (*pleijsterhuijsje*), and on Friday, July 19, he makes a new "station" (*pleijsterhuijsje*).

It is further to be noticed that while the Commandeur uses this word "*pleijsterhuijsje*" for the "shelter," he uses a totally

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different word in speaking of the house for the Postholder in Pomeroon, namely, "*huijsken*" (B. C. I, 182).

The facts of the case, therefore, amount to this: That the Commandeur, in pursuance of a plan which he submitted to the Company for taking possession of Barima, but which the Company refused to approve, caused his Outlier in Pomeroon to put up a shelter such as persons journeying in those parts were in the habit of putting up for the night, of branches and palm-leaves, somewhere in the district to the west of the Pomeroon. The locality is entirely unknown. The use which the Postholder of Pomeroon made of it is entirely unknown, if indeed he ever made any. His position as Postholder as well as his post came to an end two years later, when the second Pomeroon colony was founded; and after its destruction and the establishment of the later posts in Pomeroon, Wacupo and Moruka, no mention is ever made of the rest-hut.

It is, of course, idle to attempt to connect the remains of any particular rest-hut in the Barima with the shelter which Beekman caused his Outlier to put up in 1684. The structure was of so temporary a character and in such common use for purposes of a shelter for the night that nothing could be predicated upon finding the remains of one at this or that particular spot.

No post was ever established in Barima. A post was proposed by Commandeur Storm in 1744 (V. C. II, 95), and the Company in reply stated: "We are not averse to your making a trial" (*id.*); but two years later, in 1746, Storm reports: "I have not yet established any post in Barima" (V. C. II, 96). No further mention of a post is made in the evidence. In the muster-rolls, which run from 1691 to 1786, in an unbroken sequence, there is no mention of any employee in the Barima of any kind whatever; and as these muster-rolls were most careful to specify the locality in which the employee was occupied, and mentioned every employee in the colony, it is conclusive proof that no one was ever so employed. The whole course of the correspondence and the

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whole history of affairs in Barima confirms this conclusion, while so much of it as relates to the posts at Pomeroon and Moruka make it certain that no post ever existed to the west of the latter point.

"The "shelter" has no bearing upon the question of territorial rights. In the famous declaration of 1580 (B. C-C., p. 44) Queen Elizabeth refers the claim that the Pope had clothed Spain with the possession of the New World, "on the ground that the Spaniards have touched here and there, *have erected shelters*, have given names to a river or promontory; *acts which cannot confer property.*"

Apart from the erection of the "shelter," only two incidents are to be noticed during the whole history of the Dutch colony that bear in any degree upon the question of settlement in the coast territory west of the Pomeroon and Moruka.

The first of these is the Rosen incident, in 1766.

It will be remembered that five years prior to this date the West India Company had suspended the prosecution of the Orinoco trade by the Dutch colonists, the policy of the Company being to encourage the Spaniards to carry on this trade with Essequibo through the post at Moruka. The Barima district was at this time, and during the rest of the century, continually visited and patrolled by the Spanish authorities, whose guard-boats were constantly in the rivers and who exercised frequent acts of dominion throughout the territory, which will be referred to later under the head of Political Control. It appears from the statements of Director-General Storm, of Essequibo, that inhabitants from that settlement, comprising the offscourings of the colony, were at this time sojourning as squatters in some part of the coast territory, in order to obtain freedom from restraint and the opportunity to lead a lawless life. The locality occupied by these squatters is unknown, but it was somewhere in the neighborhood of the Barima River. The doings of these Dutchmen became a public scandal at Essequibo, and are described in vivid language

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by Storm, who decided that the good of the colony and the maintenance of friendly relations with Spain compelled him to take notice of what was going on. The singular fact, however, in reference to it is that, while in an uncertain and hesitating way Storm from time to time suggested to the Company the assertion of some Dutch claim to this territory, or part of it, his first step in relation to these particular colonists was to write to the Governor of Orinoco and ask him to take the matter in hand, on the ground that the locality occupied by the squatters was in Spanish territory. He said, April 6, 1766 (B. C. III, 131):

"I shall write to the Governor of Orinoco concerning the state of affairs in Barima, which will become an absolute den of thieves, a rag-tag-and bobtail party of our colonists staying there under pretence of salting, trading with the Indians, and felling timber, &c. They live there like savages, burning each others huts and putting each other in chains, and I fear that bloodshed and murder will come out of it.

"The west side of Barima being certainly Spanish territory (and that is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint; wherefore I think of proposing to the Governor (who is daily being more highly praised for his friendliness to all foreigners) to carry this out hand-in-hand, or to permit me to do so, or as and in what manner he shall consider best."

According to Storm's account, the Governor, in reply, sent to Storm a verbal message to the effect "that the best thing to do would be to let those evil-doers fight it out" Thereupon Storm sent the Postholder of Moruka to break up "this nest," but was careful to charge him to avoid the Spanish bank (B. C. III, 141). The Postholder found the Dutchmen whom he had come to seek on the right bank of the Barima. He found that one of them, Adams, was "bound fast to a tree with a chain, and nearly dead, having been thus kept for over three months by Jan Adolph van Rose" (B. C. III, 132). Both of them belonged to the Essequibo colony, in which Rosen had always borne a bad character. The Postholder liberated Adams and brought Rosen to Essequibo, where

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he was tried and punished, and the gang that had established itself in Barima was effectually broken up.

This certainly is not a settlement upon which any claims are to be founded. The action of the Dutch Governor, exercised over Dutchmen, put an end to it; and he took no action in the matter until after he had asked and virtually received permission from the Spanish Governor.

The most significant feature of this episode lies in the fact that immediately thereafter the Court of Policy of Essequibo issued a resolution or decree forbidding all sojourn in Barima. The Director reported this action May 30, 1766 (V. C. II, 165) as follows: "Furthermore, the Court forbade that any one hereafter stay in Barima and charged the Postholder of Moruca to see that this is carried out, because in time this would become a den of thieves, and expose us to the danger of getting mixed up in a quarrel with our neighbors, the Spaniards."

This action of the Dutch authorities effectually disposes of any claim to establish an adverse holding by means of settlement from this time on in Barima. As long as this order of the Court was in force, no such settlement could be established. It would appear from the evidence to have been never repealed. Certainly the Dutch Government would not be in a position to take advantage of the establishment of such a settlement in violation of its own orders; and as far as the control of the Dutch by the colonial authorities was concerned, that control was prohibitory of settlement in this territory. The order of the Court was plainly directed to Dutch subjects alone. Its terms show this. It was to avoid "the danger of getting mixed up in a quarrel with our neighbors, the Spaniards," a danger which could only arise from settlement by its own people.

The fact, however, that the order of the Court of Policy was personal and not territorial in character is decisively established by the statement of Storm himself. When chided by the Com-

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pany with inconsistency in his action as to Barima, he justified the order, giving as one of his reasons:

"Because I think that the Court certainly has the power to forbid its citizens and colonists to go to any places when such is considered to be inexpedient or dangerous for the Colony" (V. C. II, 169).

This statement is of vital importance in this controversy not only in reference to this order respecting the coast district, but to all the Dutch orders respecting the whole territory in dispute. In the first place, it shows that, as to this particular order or prohibition, it referred only to Dutch subjects, and that it was in no sense an attempt to exercise territorial control. But, in the second place,—and this is a matter so far-reaching, that it applies to all the Dutch regulations—it shows that the practice of the Dutch authorities in making these regulations or prohibitions was to express them in general terms, which, as far as the mere language meant, included all persons; but that the orders so framed, both in their intention and their operation, applied, notwithstanding their general terms, only to Dutch subjects. When we meet with a prohibition as to trade or passports or what not, outside of the confines of the actual settlement on the banks of Essequibo, it means not an exercise of control over such outside territory, but an exercise of control over the persons of Dutchmen.

It is true that Storm also said that the east bank of the Barima was "in our jurisdiction"; but in view of his shifting attitude, both before and after the boundary question, and especially in view of his statement to the Governor of Surinam, but little weight can be given to this observation.

However the order of the Dutch Court may be considered in its bearings on political control, there is no doubt as to the question of settlement. The Dutch authorities themselves prohibited Dutch settlement in Barima in 1766. What followed next, however, affords a still more curious illustration of the situation of affairs in this locality.

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This is the second of the two incidents above referred to, namely, the case of La Riviere.

So little authority did the prohibition of the Dutch Court have on Barima, even over Dutch subjects, that one of the colonists, Jan La Riviere, in violation not only of the general order, but an express and particular prohibition, actually undertook to settle there, and shortly after died, leaving his widow in possession of the plantation. This fact was reported to the Spanish authorities, and the latter, having a valid claim to the coast territory, which they asserted in the most emphatic manner when occasion demanded, upon learning that the plantation had been established, sent down their coast-guard vessel, early in 1768, under the command of Don Francisco Cierto, Captain of the Company of Pioneers, drove out the occupants of the plantation, burned the buildings and took away the movable property, which was confiscated and sold for account of the State (V. C. II, 358–364, 367). Against this act the Dutch did not even make a protest.

The locality of the La Riviere plantation is not described or reported by Cierto. There is nothing but speculation to guide the investigator as to where it was. A Spanish officer, Inciarte, passed through the Barima in 1779, and found in the Aruka a hill, which he was told had been inhabited for a few years by a Dutchman of Essequibo named "Mener Nelch." He found the hull of a canoe, which an Indian told him had belonged to the Dutchman, and the relics of coffee and fruit trees. The plantation at the time of his visit appears to have been deserted.

It is not improbable that the deserted plantation seen by Inciarte was that from which the La Riviere family was driven eleven years before. Inferences to be drawn from the alleged name are too uncertain to be of any value. A conjecture might be hazarded, however, that the Mener Nelch spoken of by the Indians was intended for Mynheer Nelis or Neels, as he was sometimes called, who was the Postholder of Pomeroon at the time the La Riviere family was driven out. He remained as Postholder

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until 1774, as the records show. This was five years before Inciarte's visit. That his name may have been associated in some confused way with the plantation or with Dutchmen generally is not unlikely. It is certainly less forced than the supposition that Nelis, the employee of the colony who was particularly charged with observing whether the prohibition upon settlement in Barima was carried out should have settled there himself after the expiration of his term of office. If he did so settle it could only have been as a squatter, in violation of the prohibition of the Dutch Government, and for a year or two at most, and his act, if he committed such an act, has no bearing upon this controversy.

The only comments made by Storm upon the destruction of the La Riviere plantation occur in a letter of June 1, 1768 (V. C. II, 176), where he says:

"This did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinocque, and for greater security I had this inserted in his pass. He was also forbidden by the Court to settle in Barima."

And at a later date (V. C. II, 187):

"Jan la Riviere (the same who against the absolute prohibition of the Court had gone with his slaves to live in Barima, and, he having died there, the Spaniards have robbed his widow of everything, she being now returned again into this colony)."

This is the last allusion in history to settlement in Barima. In the whole evidence in this case, containing, as it does, a narrative of the utmost minuteness, set forth in official records and correspondence, and embodying the labors and investigations of the Foreign Office, the Colonial Office, the U. S. Commission, and those entrusted with the preparation of this case on both sides, there is no allusion other than those above referred to of a Dutch settlement in the territory in dispute west of Moruka and north of the Imataka Mountains for the period of one hundred and sixty-six years, from 1648 to 1814.

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These incidents are not of such a character that any territorial title can be based on them. They lacked all the essential ingredients. They were not national acts; on the contrary, they were expressly disavowed by the Dutch Government. In the first case it broke up the plantation itself, after calling on the Governor of Guayana; in the second case it had made a law forbidding its colonists to settle in the territory, and the settlement had been made in violation of that law and of a further express prohibition as to the individual. Not only did the settlements lack the character of a national act, but the national authorities disowned them. They were in no sense exclusive of Spanish authority and settlement; on the contrary, they were excluded, in the second case at least, directly by Spanish authority. They were not made under a claim of right on the part of the Government, or even on the part of the settlers themselves as representing the Government; in fact, the Government repudiated them. Finally, they had no continuous existence for the time required by the Treaty, as they lasted only a year or two at the most.

In view of the above facts, which cannot be controverted, it is not a little startling to find in the British Case the following statement (p. 51):

"There is little doubt that at this time [1764] there were Dutch plantations in the Aruka, a tributary of the Barima, and at Koriabo higher up on the Barima."

There is no historical evidence whatever that any settlements of the Dutch existed in 1764 in the Barima district. The explanation of the statement is given in what follows:

"There are still visible traces of settlements at these spots, and they correspond with the description given of Dutch Settlements then existing in the records of secret expeditions made by the Spaniards to the Barima in 1760 and 1768. In the latter year the Spaniards secretly and without previous complaint made a raid upon Barima and destroyed a Dutch plantation, which was probably in the Aruka, but they did not themselves hold or occupy the district of the river."

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The same statement is repeated in the text of the British Case, at p. 68, where it says:

"The traces of cultivation remaining in the Aruka and at Koriabo probably mark the sites of plantations, one of which was probably that destroyed by the Spanish secret expedition in 1768 and another that reported in 1760, but which was situated too far up the Barima for the Spaniards to reach."

The question as to what these "traces" mean will be dealt with presently. The first question, however, to consider, is the statement made in two places in the text of the British Case, that, as a historical fact, apart from traces, "settlements" (as is stated on page 51) or "plantations" (as is stated on page 68) existed in Barima in 1764, and were reported by the Spaniards, as a result of expeditions made by them in 1760 and 1768.

The expedition of the Spaniards in 1768 was that of Cierto, already referred to, which destroyed the La Riviere plantation. It is possible, though hardly probable, that the plantation left "traces" which were still visible in the present century. The evidence is conclusive, however, that this plantation did not exist in 1764. Storm himself says, in the passage above cited (V. C. II, 187), that La Riviere had gone into Barima after the prohibition of the Court, which, as already stated, was only decreed in 1766. The plantation could not, therefore, have been in existence for more than two years at the outside.

The allusion to the expedition of 1760 merits further investigation. The claim is here made by the very text of the British Case (p. 51) that the traces "correspond with the description given of Dutch settlements then existing" in the record of the expedition "made by the Spaniards to the Barima in 1760." The statement is reiterated with additional force at page 68 that the traces "probably mark the sites of plantations," one, that of 1768, "and another that reported in 1760, but which was situated too far up the Barima for the Spaniards to reach."

The text, therefore, states in terms in one place that a Dutch

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settlement was found, and in the other that a plantation was described and reported by the expedition of 1760. It is an intimation that another settlement, which was also a plantation, actually existed as a historical fact, and that it was reported to the Spanish authorities in 1760. The reference in the text of the Case is B. C. II, pages 189–90. These pages contain the report of Flores, a Lieutenant of Infantry, who was in command of a detachment engaged, according to the customary practice of the Spanish authorities, in patrolling the Barima district, under the orders of Don Juan Valdes, the Commandant at Orinoco. The report refers especially to certain seizures of Dutch vessels and canoes in the Barima and Lower Orinoco. Flores also states that he had been obliged to put several of his men aboard of the vessels which he had seized, and that "being informed that it took five days to go up to the place in which traffickers in poitos were; for this reason," and because they would be warned of his coming, "he resolved to turn back."

Turning to the orders under which Flores was acting (B. C. II, 187), it appears that four Indians had recently escaped from a party of Dutch slave traders in Barima, but the traders were waiting at their huts for another batch which they had ordered, "after which they are going back at once to their colony with the product of this illicit transaction," and that Flores was ordered to capture them.

It also appears from the declaration of the Arawak half-breed Yana (who was captured by the expedition), which is annexed to the report (B. C. II, 194), that "the Dutch buyers of poitos were not from the Colony of Essequibo, but from that of Surinam, because the Governor of Essequibo did not allow any Dutchman to go and conduct this traffic."

This is the only reference in the evidence to what the British Case has in two places cited as a historical "settlement" or historical "plantation" of the Essequibo colony in Barima, and of which it gravely asserts that the "traces" found in the Aruka

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and at Koriabo may be the remains. It consisted of a party of prowling Surinam slave traders, who were "going back at once to their colony," and who, while waiting for the Caribs to bring in the *poitos*, put up huts for shelter, as did every one else, Spanish, French, Dutch, or Indian, who had occasion to pass a night on shore in Barima. If this is the kind of "plantation" which the "remains" indicate, the only wonder is that there is an acre of clear ground in the disputed territory which does not show "the remains of a plantation."

The historical evidence as to the question of settlement being disposed of, it remains to consider the evidence which has been brought forward in the British Case of what may be classed under the general name of "traces." There is a good deal of this so-called evidence, prepared for the most part by officials and employees of the existing British Colony after Her Majesty's Government had set up their claim to the Schomburgk line. None of it finds any support in the records of either colony prior to 1814, except in so far as the supposed "traces" may refer to one or another of the "settlements" whose history has been followed in this chapter. As the locality and extent of these "settlements" is entirely unknown, they may serve as the explanation of a great many of the "traces."

Apart from the plantation of the La Rivere family, and from the fact so vividly described by Director-General Storm that "a rag-tag-and-bobtail party of our colonists, staying there upon pretence of salting," &c., "live there like savages, burning each others' huts," to the west of Barima, as he had heard, or to the east of it, as he found in the case of two of them, the extent or numbers of whom cannot now be ascertained, the existence of "traces" is entirely inconclusive as to Dutch settlement in a territory in which for a considerable number of years the French were actively trading, and the Spanish for more than a century were constantly present, and exercising on frequent occasions active dominion and control.

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It is not here claimed that the "traces" are conclusive of French settlement or of Spanish settlement; although Frenchmen at least, being so much further from home than the Dutch, would probably come for a longer stay, and establish themselves with a greater evidence of permanence. It is only claimed that they afford us no evidence of Dutch settlement.

Out of all the traces cited (and it is to be observed that many of them refer to the same thing) none can be pointed out that have about them marks indicative of any particular nationality.

The attempt has also been made to sustain the evidence of "traces" by "tradition." "Tradition" means in this case either the alleged statements of Indians of a very recent period, reported by some one who professes to have heard them, or the declarations of such Indians themselves, made with the usual formalities and taken under official direction in British Guiana since the present arbitration was provided for by the Venezuelan-British Treaty. Of the latter kind are the depositions of the Warrau Waiakumma, and the Warrau woman Burriburrikutu, printed in B. C. VII, 209. These deponents to "tradition" as a rule cannot write, and their testimony relates to what happened at or before the beginning of the present century. Its value as evidence is not such as to entitle it to any consideration whatever.

The present Argument has taken up, *seriatim*, not only all the historical evidence of settlement in the case, but also all to which the British Case makes allusion as historical evidence.

The question remains as to the significance of the so-called "traces," all of which belong to the present century and are subsequent to the construction of what is known as the Schomburgk line as a suggestion for a boundary claim.

These "traces" are of two classes: first, those discovered by Schomburgk at the time of the invention of his line, and, secondly, those discovered by the authorities of British Guiana subsequent to the Treaty of Arbitration, which set on foot the present proceeding.

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In reference to the first, it may be remarked that Schomburgk himself was the only discoverer of these "traces." Thus, at the mouth of the Barima (B. C. VII, 13), he finds evident proofs that the ground had been under cultivation, and notes some cassava plants and shrubs of annatto, which he says do not grow wild on ground subject to the tides. He also states that Colonel Moody, of the Royal Engineers, who reported on the military situation of the Orinoco at the beginning of the century, observed at the mouth of the Barima the remains of a former post, which Schomburgk attributes to the Dutch.

These matters are considered of sufficient importance to be set out at length and with all seriousness in the British Case, at page 67. In reference to the plantation at the mouth of the Barima, and especially the cassava plants and shrubs of annatto, it should be stated that both these valuable products were raised by the Indians, and in fact, as far as the Indians had an occupation at all, the raising of annatto and cassava constituted that occupation. Both of them are mentioned as being bought in innumerable cases by the traders from the Indians, and the fact that plants of this character grew at Barima Point, whether wild or cultivated, signifies absolutely nothing.

As to the post on the Barima, which Schomburgk, without reason, attributes to the Dutch, we only know of its remains through Schomburgk's reference to Colonel Moody's report, which cannot now be found, and Schomburgk's comments upon it give us no clew as to what was actually seen by Colonel Moody. He may have seen the remains of a post or of a fort. He may have seen little or nothing for we have no knowledge from him of what he did see.

As to the remains of a post, as a post may be anything from a palm-leaf hut suitable for a night-shelter, like the first post in Cuyuni, to a stockade, or a blockhouse, or even a fort, it is impossible to predicate anything of the remains of a "post" without knowing of what they consisted. Anybody might have built a

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shelter at Barima Point, and doubtless such a shelter was built time after time during the history of the Dutch and Spanish colonies. If the remains were those of a fort, unquestionably it was the fort which, as we know, was built and occupied by the French at the mouth of the Barima in the latter part of the seventeenth century. The matter, however, is purely conjectural, as there is no evidence as to what the "remains" were.

It is also stated that the Indians pointed out to Schomburgk a spot on the River Herena, a tributary of the Barima, not far from Koriabo, where a white man had cultivated sugar and carried on a timber trade (B. C., VII, 21, 237). According to the statement, the place was called by the Indians "the last place of the white man," and traces of cultivation and drainage were still to be found there in 1840.

This statement also is set forth at length in the text of the British Case (p. 67), and Schomburgk on his map designated the place by the alleged translation of the Indian name. Who the last white man was who occupied this spot, and whether he was a Spaniard or a Dutchman, no one knows. He might well have been a Spaniard, seeing that both in reference to the intercolonial trade and in reference to the exercise of physical control in the Barima, the Spaniards certainly were the last white men up to the time of Schomburgk. These particular "traces," therefore, would seem to make for Spanish rather than Dutch settlement.

An exhaustive analysis of all the modern evidence of "traces" and "tradition," with which it is unnecessary to load this argument, shows only two material facts: one, the existence of fruit trees, pointing to some settlement on the Aruka, and of ditches, pointing to some settlement on the Barima, in the neighborhood of Koriabo. The Indian affidavits as to their Dutch origin may be dismissed without comment, the sources of information are so obviously remote and the construction of the affidavits being so obviously open to the suggestion of interest. The mere presence of clearings indicates nothing. It is obvious from the affidavits

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that the Indians themselves were in the habit of making clearings. The contention that the presence of fruit trees points to a plantation of white men, is fully disproved by Schomburgk's account of his first exploration near the upper Barima and Acarabisi where he found many Indian plantations containing such trees (B. C. VII,).

As to the ditches, if such methods of drainage were much in use in the Dutch colony of Essequibo, as well as among the Spanish inhabitants of the wide-stretching lowlands of what is now Venezuela and what was formerly the Province of Cumaná, as they doubtless were, it would not be surprising that, in the course of a couple of centuries, some Indians might have learned to dig them, and this, too, although it might be said with truth that, as far as living observers are concerned, such a practice among the Indians is not known. It is difficult for any living observer to say exactly what the Arawaks and Warows, the Caribs and the Accoways, were and were not doing during the whole of the seventeenth and eighteenth centuries in the district of Barima. As they undoubtedly had to enlarge and deepen the "itabos" from time to time in order to pass through them, and as they undoubtedly saw numerous instances of the advantage of opening ditches in a swampy country from their neighbors on both sides, it is more than probable that they made, at one point or another, during these two centuries, half a dozen such ditches. Indeed, from the very fact mentioned by im Thurn, that an Indian name "hokaba" existed, which meant an artificial water-course, their familiarity with the thing itself is evident. Nor is it unreasonable to suppose that these Indians, whose settlements and villages in Barima are well-known, and who certainly were cultivating the soil to raise cassava and annatto, might also have obtained from time to time from their neighbors on one side or the other the seeds of cocoa, coffee or fruit trees.

But even if these were not Indian settlements, there is no more reason to suppose that they were settlements of Dutch from Esse-

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quibo than of Spaniards, or Frenchmen, or Dutch from Surinam. All of these were present at one time or another in this territory, some of them, as the French, only for a well-defined series of years; others, as the Spaniards and the Surinamers, through two centuries. It is difficult to predicate from the presence of a few fruit trees in one locality and a few ditches in another anything as to what may have happened in a given territory during a period of two hundred years. Conceding, however, for the sake of the argument, that the "traces" represent settlements of white men, and that these white men may have been Dutch, they still would have no significance in deciding this controversy. In the two settlements which have already been referred to in this Argument as historical, namely, that of Rosen and his companions in 1766, and that of La Riviere and his widow in 1768, the localities of which are unknown, there is quite enough of itself to account for everything, whether visible remains or Indian traditions, that is contained in all of these affidavits. That these two cases of so-called settlement cannot be the foundation for any territorial claims has already been shown. Even if there were other settlements at the same period, the fact that they were made in the face of a prohibition of the Dutch Colonial authorities to settlers in the colony would deprive them of any value in this respect. Settlement, in order to become the foundation of a territorial claim, must be a settlement which in some way bears the stamp of a national act, either by reason of Government grants, or by some other mark of authority and countenance from the Government. Where such a settlement is made not only without the approval and countenance of the Government, but with its distinct and emphatic disapproval and in defiance of its express prohibition, it has no bearing upon territorial claims whatever.

Any settlement made in Barima after the order of the Court of Policy of 1766 is a settlement made not with Dutch authority, but distinctly in opposition to Dutch authority.

The entire evidence on this branch of the subject may be

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briefly disposed of. What happened in the district of Barima, as evidenced by contemporaneous statements, documents and records, we may take as evidence of a certain weight, according to the surrounding circumstances. But as to drawing inferences from the presence of fruit trees, or ditches, in two or three places, as to the creation of a settlement by this or that person or class of persons who might at one time or another have passed through Barima during the course of two hundred years, the evidence is entirely worthless. The presence of these vestiges is in no way remarkable. What is really remarkable, and we may say almost amazing, is that, with all the means of investigation in their possession, and with the help of surprisingly zealous and able public officials, backed by a large population of only too willing Indians, the British Case can produce only such shreds of testimony as to settlement of any kind, anybody, in the district of Barima.

The question of Dutch settlement in Barima may be dismissed in a word. The Case shows affirmatively and positively that no such settlement was ever made, during the whole period of the Dutch colony, by Dutch authority, even before the Colony prohibited it in 1766, and that no Dutch settler was even there with a knowledge of the Colonial authorities, except in the case of Rosen, which led to the order forbidding settlement. In the face of such a record, it is idle to attempt to bolster up this Case with suggestions about fruit trees, and ditches, and traditions, and matters of that kind. The Dutch colonial records are here, spread out to interminable length, dealing with every detail of colonial life with a minuteness that would neither have been required nor permitted had not the government been that of a trading colony. With every grant of land set forth, with every occurrence of any moment that happened in its history, there is not one syllable in it from beginning to end to indicate that the Dutch ever knew of any settlement in Barima.

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CHAPTER XIII.

POLITICAL CONTROL.

In view of the fact that, under the Treaty, the Arbitrators are empowered in their discretion to consider the exclusive political control of a district sufficient to constitute adverse holding, or to make title by prescription, it becomes necessary to refer to the necessary attributes or requirements of such control.

The general principles and definitions of the phrase "political control," as used in the Treaty, have already been considered, and it has been shown to be the exercise of sovereignty over territory through political or governmental administration; and, further, that "exclusive political control of a district" means such an exercise of sovereignty over the district to the exclusion of all other sovereignty.

Political control or jurisdiction may be either territorial or personal. In general, the political control which is implied in the term "sovereignty" is a control exercised over everybody in the territory of the sovereign, and over the subjects of the sovereign everywhere. In the first sense, it is territorial; in the second, it is personal.

The political control of which the treaty speaks is political control of a district. It must therefore include territorial control. Mere personal control of subjects is not sufficient. It is not enough to show that the Government making the claim exercised control over its subjects either in what were its undisputed territories, or in territories outside of these, whether in dispute or not. The present controversy is not concerned with such control. Such a control as this may be, and generally is, very freely exercised by Colonial Governments in a country as yet not fully settled. An offending subject who has committed an offense against the person or the property of another subject, or who has per-

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formed acts injurious to the State, such as quarrelling or meddling with the Indians, or has done anything which is contrary to public policy or of which the law takes cognizance, is in such Governments punished without reference to the place where the offence was committed.

Thus it happened once or twice that the Dutch authorities found a Dutchman stirring up the Indians or ill-treating them in such a way as to provoke reprisals and punished the Dutchman. They also found Dutchmen committing offenses against other Dutchmen which they punished as those of Cauderas and Van Rosen.

The Governor of the Dutch colony, like the Governors of all colonies of the period, and as a matter of necessity under the circumstances, exercised a disciplinary oversight of the colonoists. Such an oversight was necessary for the safety of the colony, and was exercised by him freely upon the members of the colony wherever they might be.

The exercise of this personal jurisdiction is fully recognized by International Law. Says Mr. Justice Johnson:

> "The jurisdiction of a country may be exercised over her citizens wherever they are, in right of their allegiance; as it has been in the instance of punishing offenses committed against the Indian."
>
> Cherokee Nation *v.* State of Georgia, 5 Peters, U. S. Sup. Ct. Rep., 1, at page 31.

Territorial jurisdiction, on the other hand, is a jurisdiction exercised not with reference to the citizenship or nationality of the individual, but with reference to the territory upon which the offender is found, or in which the offense is committed. It operates not only upon the citizens or subjects of the Government which exercises it, but it operates in like manner upon foreign citizens or subjects. No one within the territory is exempt from the operation of the territorial law. That is an elementary proposition. As, therefore, it is hardly to be supposed that in a district promiscuously occupied by the subjects of one State and by the subjects of another State, possibly with numerous others also

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coming in from a third State, all the offences are committed only by the subjects of the first State, a political control territorial in its character will be disclosed immediately by the trial and punishment of offenders from among the subjects of the other State. If it turns out, however, that no such jurisdiction is claimed in reference to any but the subjects of one State, who are, if anything, in the minority, it is conclusive evidence that whatever control is exercised is not territorial, but personal.

Applying these principles to the disputed territory, it will be found that the Dutch authority was never exercised, either by way of process and arrest, or process without arrest, or arrest without process, or trial and punishment, or trial without punishment, or punishment without trial, against any Spaniards or against any Frenchmen. It was not until they came within the Eesequibo or Pomeroon limits comprising their actual settlements and plantations, that any jurisdictional measures were taken against foreigners, and then only for acts actually committed in such territory, or for offences against the territorial authority at the frontier, such as smuggling and the like. Within these frontiers, within, that is to say, the falls of the Cuyuni, on banks of the Essequibo and Pomeroon, they did exercise this jurisdiction. There they arrested Spaniards, Frenchmen and Englishmen. But they never did anything of the kind outside. Nor did they snforce any authority against Dutchmen unless they belonged to the colony of Essequibo.

There being an entire absence of evidence in the British Case as to any real political control over the territory west of the Moruca and of the falls of the Cuyuni, the Case has attempted to supply the want by an immense mass of material relating to miscellaneous acts in the disputed territory, such as trade, fishing, mining, timber cutting, the relations with the Indians, the capture of runaway slaves and what not. Each of these is considered in its proper place in this Argument, and it is shown that

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such of the acts referred to as were performed at all, were in no sense acts of political control.

Even the alleged regulation of trade by the Dutch authorities was merely the enforcement of a prohibition on its own subjects, in order that they might not enter into competition with the Company. The latter never did an act or took a step of any kind whatever to prohibit this trade in its freest form to any person outside of the Dutch colonists. Its monopoly of the trade, so far as it had any, was in the nature of personal control of its subjects, not in any sense of territorial control as to the territory where the trade was carried on.

In order to have any significance, under the Treaty, political control, or the exercise of sovereignty through political or governmental administration, must be to the exclusion, during the entire period, of all other sovereignty and control.

It follows that a political control, even supposing that any such was exercised by the party claiming adverse holding in the disputed territory, which was shared equally by both the claimants to such territory, could not have been an exclusive political control, and could not come within the definition of the Treaty.

Nor is the political control which is required in the one case to prevent the adverse holding from being exclusive any greater than the political control which, under the Treaty, is necessary to establish the adverse holding. If the political control necessary for this purpose rests upon such acts as issuing passports, trading, holding relations with Indians, and the like, the performance of similar acts by anothhs State, although they may fall equally short of political control, is sufficient to prevent the first from being an exclusive political control. However slight may be the control exercised by the other State, it is just as effective a control, it is just as much a political control, as the control exercised by the first, and is all sufficient to prevent the latter from being characterized as exclusive. It is not an exclusive political control, where the control is divided.

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The general principles which, as has been already stated, govern all questions of adverse holding, must be applied to political control.

It is for the Dutch or their representative in this controversy, that is to say, Great Britain, to show that a political control was exercised for fifty years in the disputed territory, exclusive in its character and such in all its aspects as would warrant the Arbitrators in accepting it as the foundation of adverse holding.

Great Britain is, under the Treaty, to carve out, if she can, some part of this territory in addition to what was acquired by the Treaty of 1648, by means of the provision as to political control. The only question to be tried out from that point is whether the Dutch got anything more away from Spain than they held and possessed at the date of that Treaty. It matters not whether Spain had thirty or forty mission villages in the territory west of the Cuyuni, where it exercised complete control, so long as the Dutch exercised no such control. If the Dutch exercised no control, the Spanish settlements might be wiped out, and the question would still be the same. So it is with the whole Cuyuni valley west of the falls, of the whole district to the south and to the north of the Imataca range, from the mountains of Brazil to the sea-coast; it is for Great Britain to show an exclusive political control on the part of the Dutch. Failing to prove that, she fails to prove her case.

Political control, in order to constitute adverse holding, must be an actual control. Mere trading regulations are not enough. Mere instructions to Postholders are not enough. In order to support a claim of adverse holding, the control must be actually exercised. The stationing of a man in the neighborhood even of a well-defined district, with the object of observing that district, is not political control in any sense. It is a mere duty of observation.

The claim of the exercise of political control, even more than the claim of settlement, must have some definite limits. If this

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claim had any foundation, there should be and there would have been, somewhere in the British Case, which purports to be the statement of facts upon which that Government comes before the Tribunal, a definite statement of the limits, more or less precise, within which, or of the territory over which, the Dutch exercised political control, or a district that can be referred to this source of title. No such statement is to be found. There is no suggestion throughout those documents that any line proposed or any claim made as the net result of its evidence by Great Britain is the line within which or up to which political control was exercised by the Dutch. It all amounts simply to saying: "We went here and there. We traded here and there. We fished here and there. We hunted here and there. We had our traders here and there, buying Indian girls and boys from the Caribs, whom they had captured in their forays upon more peaceable tribes. We had a trading agent here and there, during some portion of the time. But we are unable to say to what district we obtained title by these Acts."

If the British Case had said: "The Dutch Government exercised political control to the falls of the Cuyuni and exercised political control to the Pomeroon, and therefore, as far as political control is concerned, we claim as our boundary a line connecting the Pomeroon and the eastern falls of the Cuyuni," this claim might have had some logical foundation. But the present claim is not a claim to territory defined upon a state of facts, but a claim to territory to which the facts bear no relation and which is defined upon grounds of pure fancy.

The acts of the Dutch which are relied upon as indicating political control should bear some indication that they were done under a claim of the Dutch to sovereignty over the territory in question.

Nowhere do we find that any acts of the Dutch Government were performed in the exercise of a claim of territorial right over the country; and on the other hand, we find from their intimate

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correspondence that they did not themselves see any foundation for a claim of right in any territorial extension.

The necessity of continuity, so strongly dwelt upon by all judicial authorities in cases of this character, applies as well to political control as to the question of settlement. That exercise of sovereignty, through the agency of government, which "political control" implies should be continuous.

We find that there was no government in the territory in question on the part of the Dutch; much less was there any continuity of government. The acts which are cited as partaking of the character of political control were spasmodic, fitful and intermittent. That cannot be call a continuous political control which is represented by isolated instances of covert acts of encroachment or minor jurisdiction fifteen or twenty years apart. Such a control as that is not a continuous control, and cannot be made the foundation of adverse holding.

The principle that adverse holding must be open and notorious serves as an additional reason to exclude certain acts cited as acts of political control, which, from their nature or their mode of performance, were so obscure and so absolutely unknown to any one but the agent of the Government immediately engaged in them as to have no significance as far as establishing adverse holding is concerned.

It would hardly be necessary to dwell at any length upon this branch of the subject, were it not for the fact that the effort has been made in the British Case to create some semblance of political control by the citation of such a number of petty acts as might be discovered by searching in the records for a period of a century and a half that it becomes almost impossible to take up every one of these acts for particular mention, and they may be disposed of by reference to the general principle which excludes them from consideration.

In respect to this requirement, the striking contrast between the policy of the Spaniards and of the Dutch has already been

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noticed. The keynote is struck by Storm himself, who says of the Spaniards (V. C. II, 157):

"What can we expect from the numerous arrivals of settlers in Cayenne and the removal of the Spanish colonies in Guayana so much nearer to our boundaries? The latter go to work openly, like a proud nation, and they can therefore be better opposed, an open enemy never being so dangerous as a secret one."

Contrast with this the policy of the Company as disclosed in the correspondence between its Managing Council and its Director. Again and again Storm is cautioned by the Company that he is not to oppose the Spaniards openly. Various reasons for this are hinted at; but the principal reason is the absence of any ground of right. It is suggested to him that he should quietly take measures to have the Spanish missions attacked by the Caribs, which is done; that he should stir up the feelings of the Indians against the Spaniards, which is done; but the greatest pains are always taken that nothing shall be done openly and by way of claim on the part of the Dutch.

In considering the question what, if any, political control was exercised in Guayana by the Dutch colony of Essequibo, we will consider, as in the case of settlements, four separate localities, namely:

(1) Essequibo.
(2) Pomeroon.
(3) Interior Territory.
(4) Coast Territory.

(1.) Essequibo.

It is freely admitted that, within the boundaries which have already, in considering the question of settlement, been determined for the Essequibo plantations, namely, along the banks of that river and on the Cuyuni and Massaruni as far as the falls of the latter, as well as to Demerara and other settlements on the east, an active and complete political control was maintained by

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the Dutch, not only during the period of fifty years, but during the whole period of their occupation.

The only point to which attention need again here be directed is that the boundaries of political control, as well as the boundaries of settlement, were definitely fixed by the limits of the Essequibo River itself and, on its two tributaries, by the falls, which made an absolute barrier to navigation. They formed a barrier to control for the same reason that they formed a barrier to settlement, for in this case settlement and control were coterminous. The meridian of 59° west, therefore, which has been already referred to as marking with geographical exactness a point well outside the limits of settlement, may also be referred to as marking with exactness a point equally far outside the limits of political control.

During a great part of its history the condition of the colony of Essequibo was such that it had neither the will nor the power to extend its control beyond these limits. Its weakness and the weakness of its garrison are a matter of constant complaint on the part of the Director-General during this whole period. Thus, he reports to the Company, September 2, 1754 (V. C. II, 112-13):

"This being so (and I fear it is only too certain), what is to come of it, or what shall I do? With the small number of soldiers I cannot repel the least aggression in those quarters. It is even impossible for me (however necessary at this conjuncture) to detach eight or ten men to garrison and defend as far as possible the post of Moruca, which will, I fear, see trouble. All that I can do is, with the aid of the Carib nation, whose flight from Barima I daily expect, to cause all possible hindrance to the undertaking; but then I should want ammunition and food and have none of either."

On October 11, 1754, the Secretary in Essequibo, Spoors, reports (V. C. II, 114):

"There being on hand not a grain of powder, except what you sent by the *Essequeebsche Vriendschap*, a barque was hired and sent to Barbados for powder."

On September 1, 1759, Storm reports (V. C. II, 137) that he would be able, if "honored with your orders and only provided

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with some reinforcements, both in soldiers and in powder and arms, to procure proper satisfaction."

On August 28, 1762, Storm states (V. C. II, 150-1) that the Postholder of Maroco has asked for reinforcements, and says:

"The garrison being extraordinarily weak, and finding myself compelled to send at least eight men to Demerary, I was unable to give him any men, but instructed him to engage one or two mulattos for three months at soldiers' wages if he could get them, telling him that I would provide them with arms and ammunition."

Two months later, on November 6, 1762, Storms reports (V. C. II, 151) that the same Postholder "is staying up in the bush through fear of the Spaniards, and that he had sent to the post for his belongings."

In 1767, Storm reports (V. C. II, 171):

"Therefore the reinforcement of these two Posts, Cajoeny and Maroco, becoming a matter of greater necessity every day (there being, indeed, *periculum in mora*), I hope that some good soldiers, and especially Protestants, will be sent by the *Laurens en Maria*."

In the same year, at the time of the negro insurrection, Heuvel the Commandeur in Demerara, a part of the Essequibo colony, reports (V. C. II, 174):

"I fear for the day after to-morrow; no resolution will be come to without disputes, because I have heard from outside sources that I shall be sore put to it, and placed in great difficulties how and in what manner I shall be able to protect the upper portion of this river; the citizens are unwilling to go on commando, asking why they should pay an annual poll-tax and duties, &c., if they have to defend themselves. I can send no soldiers because I have only 10 men, with which I have to guard two posts and I am, moreover, destitute of all that a soldier requires when he goes out on commando. I hope the Caraibans will be successful in their undertakings, otherwise it looks very black for this river, for what can we expect from unwilling citizens in time of danger? Nothing but great disorder and confusion; in addition to this there is a lack of everything, and even in the storehouses of your lordships. Not six weeks ago I was obliged to buy nine and a half casks of bacon for the monthly rations, there being no meat either in Essequibo or here."

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All this time the Director-General was asking the Company for reinforcements and praying for Germans or Dutchmen. He complained that the Company sent him only Frenchmen, and that the French, being Roman Catholics, sympathized with the Spaniards to such an extent that no reliance could be placed upon them, and that they deserted on the first opportunity. In 1768 when a ship arrived with recruits, the Commandeur informed Storm of their arrival in these words (V. C. II, 175):

"There are twelve soldiers on board who are again good recruits for Orinocque because they are nearly all French."

And Heuvel, in Demerara, reports of the same detachment (*Id.*):

"The others are all French deserters, so that I conclude that your lordships have been scandalously deceived by the recruiting agents, who are infamous scoundrels."

On June 1, in the same year, Storm himself complains of this fact, and says (V. C. II, 177):

"This ties my hands completely, and nothing can be done at the Posts, which are daily exposed to pillage."

He adds:

"The proximity of the Spaniards is a standing danger of desertion, and if the opportunity were embraced by many at once it would have fatal results for some plantations. This was very much feared when those seven deserted together, and we do not dare to send anyone after them, not only on account of the smallness of our numbers, but because it is feared that those who are sent would join the runaways, especially if they have a good boat and provisions."

In November of the same year, Storm reports to the Company (V. C. II, 179) that four of the French soldiers have run away from the fort at Orinocque, "as I had expected," and he adds:

"The Commander of Demerary made a very good guess when he wrote to me on the arrival of the last transport, 'There are again some good recruits for Orinocque.' In this way they will not require any recruits from Europe, if they are so well provided by us.

"This matter is really getting more dangerous for this colony every day, because the rascals are employed upon the so-called *coast-guards* and

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privateers of which I wrote in my last letter, and it has been reported to us by Spaniards themselves that the aforesaid deserters openly threaten that they will not only make a raid upon the Post in Maroco, but that they will also pay a visit to a few of the lowest plantations."

In 1769, Storm, in a report to the Company (V. C. II, 184), after describing the various captures and confiscations made by the Spaniards in Barima and the alarm consequent thereupon, asks: "What can I do with such a small garrison? The burghers are not yet ready for service."

In May, 1769, Storm again reports to the Company (V. C. II, 190-1) the acts of the Spaniards in Barima; that they had attacked the Caribs and captured several of them and carried them off, and that they were making preparations to come to Pomeroom and proposed to attack Essequibo itself. He adds:

"I regard the latter as a vain Spanish boast, but they are quite capable of doing all the rest. Things have now actually reached such a stage that we can return violence with violence, but is it not a sad thing, my lords, that we have such a weak garrison and not six men among them upon whom we can place the least reliance? To send a small detachment of twelve or sixteen men down would really be to *risquer le tout pour le tout*, for if they were all disloyal, as is only to be expected from Frenchmen and Catholics, and went over to the Spaniards all would be lost, because not the least reliance is to be placed upon the citizens."

In July, 1769, Storm again reports (V. C. II, 197):

"But we do not as yet think it advisable to use direct retaliation, for more than one reason, but especially on account of the weakness of the garrison, which it has been absolutely impossible to strengthen by this ship."

At this time the garrison of Essequibo, Pomeroon, Demerara and Mahaicony numbered 39 men (V. C. II, 207).

In 1772, matters were so serious that, on August 29, Storm determined upon the unusual course of writing to the Stadtholder himself, and refers to his action in a report to the Company (V. C. II, 220), saying:

"The very dangerous condition of the Colony, *which has been and still is on the brink of total ruin*, compels me to report the same to His Serene

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Highness as speedily as possible, which despatch being enclosed, I take the liberty of humbly requesting your lordships to forward it to him at once."

Of the unfaithfulness of the garrison, small as it was, the Director-General, Trotz, says (V. C. II, 234), in 1778, in a report to the Company:

"2d. Is the Commandant so firmly assured of the loyalty of his soldiers as to plant a command at so great a distance and on so slippery a route to Orinoco—[soldiers] whom for the most part he is now forced to guard at night at the fort by his few trusty soldiers in order that they may not desert?"

In 1802 the condition of the defences of Essequibo is thus described (V. C. II, 253):

"In the river of Essequibo, on Flag Island (the seat of the administration and of the officials of that colony; for the rest, a small barren patch of ground, on which there is not a single plantation), there exists an old, rickety fort, named Zelandia, which has not been kept in repair in order not to waste money unnecessarily; it serves only to hoist the flag there when ships are sighted which wish to go up the river, and to lock up criminal negroes in. On the point of that island is placed a small battery of about twenty rusty iron guns, which, without carriages or rollers, are lying on logs and stones and at most are fit to make the flag respected and to fire salutes."

In the same year the Governor-General reports to the Council at home, of the condition of the Moruca Post (V. C. II, 254):

"While I am finishing this letter, the Postholder of the Post Moruca comes to report that the detachment for that post arrived there three days ago, but that everything is in ruins, and that the battery cannot stand for six weeks more; that an entirely new dike of some sort must be made there and all the buildings set back; that the few cannons found there are lying flat on the ground; that the gun-carriages are rotten, and that the English have cut and slashed everything to pieces; in a word, that things are in a hopeless state."

In a condition of affairs such as has been described above, lasting for half a century, what could the Colonial authorities of Essequibo be expected to do in the way of maintaining efficient control outside of the limits of their immediate settlement?

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The West India Company never desired to exercise political control west of the Cuyuni falls, in the interior, or of the Moruka, on the coast, as is shown repeatedly by their instructions to the Commandeur or the Director-General; had they desired to do so they would have provided a sufficient garrison, and paid some heed to the Director-General's complaints of the disloyalty of their soldiers and the incompetency of their employees.

(2.) Pomeroon.

Although the settlement of this region was entirely confined to the Pomeroon River, the question of political control must be considered in reference to the Moruca as well, which empties into the sea two or three miles to the westward, because the post of Pomeroon was succeeded by the post of Moruca.

If we should admit that, as far as the actual settlements on the Pomeroon are concerned--that from 1658 to 1665, founded by the three Zeeland cities and destroyed by the English, and that from 1686 to 1689, established by Jacob de Jonge and destroyed, after three years' existence, by the French--political control was complete during the existence of the settlements, the question remains whether the maintenance of the four successive posts constitutes continuous political control.

The post on the Pomeroon, including therein its successors on the Wacupo and the Moruca, was of a different character from the so-called posts that had a fitful and fragmentary existence in the valley of the Cuyuni. It was regarded from the first as a military outpost, as a defensive position placed upon the frontier of the colony for the purpose of checking hostile incursions into the Dutch territory.

The post had also another of the essential and inherent attributes of a frontier post. It constituted a port of entry for the Orinoco trade, which followed the interior route through the Barima and Waini. All this trade had to pass the post at Moruca,

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and this post necessarily became the custom-house of the colony upon that side.

These two facts distinguish the post of Moruca from all others.

The history of the post shows its character as marking the boundary of Dutch territory and its employment for defence and for the collection of the customs revenue. The Commandeur, D'Heere, in recommending the removal of the post from Wacupo to Moruca, in 1726, referred to both of these functions when he said that "knowing that the said Post lies far out of the ordinary course of boats which come hither through the inland waters," therefore, "it was his intention to choose a fit place in the river of Marocco to which he might transplant the house and Post, since all vessels which come through the inland waters must pass that way," and in December of the same year the Court of Policy had the same fact in mind when it decided "that the fittest place" for the post was at the landing where those fetching horses coming from the Orinoco usually make a stop, "it being possible to build a house there so close to the river side that a hand grenade can be thrown into the boats, the river being at its narrowest there" (V. C. II, 80).

In May, 1728 (V. C. II, 82), the Court of Policy having learned from the Outlier of the seizure by the Orinoco Spaniards of a Surinam fishing vessel, and hearing of the probability of a war between Holland and Spain, "resolved to reinforce the aforesaid Post of Wacquepo" and to direct Jan Batiste, the Outlier, to keep the necessary lookouts, "so that" they might "receive the earliest information in case the Spaniards should send any armed vessels to this Colony," and the Outlier, in case the post should be attacked, was directed "to defend himself to the utmost." The soldiers were accordingly sent, together with these instructions.

In accordance with its true character, it appears from the Ordnance Report to the Company in 1731 that the post was equipped with four cannon, two two-pounders and two one-pounders.

In further confirmation of the character which distinguished

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this post is a statement of the Commandeur, in a report to the Company in 1737, in which he had occasion to notice the fact that the post of Wacupo and Moruca, formerly an important trading place for annatto, "has these last years fallen off in this business"; and he adds: "While I see no way of changing this, we must, nevertheless, keep up this post, because it was established for the maintenance of your frontier stretching toward the Orinoco" (V. C. II, 89).

Its character was also recognized by the Spanish colonial authorities. In 1747 the Spanish Governor, in speaking of Moruca, describes it as "the stronghold called the Post, which the Dutch of Esquivo maintain with three men and two small cannons" (V. C. II, 297).

In 1760, in consequence of Spanish threats, the post at Moruca was again reinforced.

Finally, in 1779, when it was decided to move the post lower down the river, it was put on a distinctly military footing. It was to be equipped with four or five guns.

In 1785 it was put under an experienced soldier as Commandant, and from that time on it retained its military character, although still occupied, as before, by a civil official.

The post was also a custom-house. In 1707 the Commandeur proposed the laying of a toll in the rivers Moruca and Pomeroon on boats, balsam, Indian slaves and cacao brought in from the side of the Orinoco through this passage by the traders of Berbice. In 1726, the plan to put the post "at the landing where those fetching horses coming from the Orinoco into the River Moruca usually make a stop," evidently contemplates a custom-house inspection. Afterwards duties were levied on articles imported into the colony, and they were collected by the Outlier at Pomeroon or Moruca as a part of his regular duties. Thus, the instructions of Director-General Storm of October 7, 1767, state in terms among these duties:

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"7. From the Spaniards ariving with tobacco, etc., he shall demand five per cent. import duty, and shall deliver the amount here."

The evidence is, therefore, conclusive that the post at Moruca was established for two purposes: (1) the defense of the frontier, and (2) the collection of duties at the frontier on articles imported into the territory.

On the other hand, the political control, such as it was, which is indicated by the history of the posts, was not without question on the part of Spain, who carried her control of Barima up to the very post of Moruca, frequently threatening the latter, and capturing Indians in its immediate neighborhood.

The results of these expeditions were so complete that the Postholder complained that "there is no longer an Indian to be found in these parts."

The conclusion to be drawn from the history of the Pomeroon and Moruca on the question of political control is that, while a certain amount of control was exercised at the posts, by means of the military and fiscal duties of these posts, it was a control which the Spanish Government did not recognize and against which it repeatedly made a forcible resistance, even to the extent of removing from its neighborhood the entire Indian population, upon which it depended both for traffic and for auxiliary defense.

One thing, however, is clearly established by the history of these posts; that the Dutch themselves considered the advanced point at which they were situated as the frontier of their territory, and that the uses to which they were put were such as are appropriate only to the frontier.

In view of these facts, if it should be decided that political control was maintained by the Dutch for the requisite period at the Pomeroon, and that this control was sufficient to create adverse holding, the boundary of this control could not lie further west than the same meridian which has been already referred to, namely, the meridian of 59° West, upon the eastern side of which is included a somewhat greater extent of territory than that

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which by any possible examination of the history of the posts can be found to have been controlled in any degree by the Dutch in this district.

(3.) Interior Territory.

In the interior, meaning thereby the territory south of the dividing mountain range and west of the Cuyuni falls as far as the extreme limit of the British claim, near the Orinoco, the question to be considered is what acts of political control were performed by the Dutch between 1648 and 1814.

The evidence shows that three so-called "posts" were maintained during fragments of this period, namely:

First, at Quive-Kuru, fifteen hours, or forty-five miles, west of the Cuyuni falls, from 1755 to 1758.

Second, at a lower point on the river, from 1767 to 1769; or from in 1766, if it is considered that the post was established in that year, although its existence was of the feeblest description.

Third, still further down the river, and near the lower falls, between 1769 and 1772.

The post of 1703, which was clearly never established, may be thrown out of consideration.

This is all, even of a quasi-political character, to be found during the history of the Dutch colony of Essequibo, lasting one hundred and sixty-six years,—the maintenance of a station at one point or another during an aggregate period of nine years, and these years not continuous. These are the only attempts to maintain even a trading station by an employee of the Company in this immense territory. For a period of one hundred and seven years after the Treaty of Munster nothing whatever was done. Then a post existed for three years at Quive-Kuru; then came another interval of eight years, after which for six years there were posts a little above the falls; then, for a period of forty-two years, nothing.

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Assuming, in the first place, that these posts could be considered as in any respect a seat of government in the interior from which political control of a district was exercised, which is denied, they fail to come within the fifty years' rule.

There is no doubt that in 1758 the post was brought to an end, and the political control, if any, represented by it was interrupted. It was interrupted by the clearest and most emphatic assertion of the rights of in the forcible destruction of the post and removal of the occupants.

Even supposing, however, that there had been no interruption and that the post had continued from 1755 to 1772, this would have been a period of only seventeen years, and still would have fallen far short of the limits fixed by the Treaty. At the latter year the post was abandoned.

There can be no question that, within the meaning of this Rule of the Treaty, voluntary abandonment, as well as forcible dispossession, puts an end to political control. Nor was it necessary that Spain should do any act in order to resume control.

When the Outlier at the second post finally settled in his hut in 1767, his actual influence on the situation was so slight that, even if the existence of his so-called post was known to the Spaniards, it could not have inconvenienced them in the slightest degree. Its evidently feeble and precarious existence called for no interference, and the Spanish authorities might well wait for it to die a natural death and relieve them of the necessity of hastening its end. Two years later, when the post was threatened, its occupants did not wait for an actual attack, but hastily decamped to an obscure refuge lower down. When the end came by the abandonment, in 1772, of even this nominal station, the Spaniards were not required in any way to reassert possession; their possession revived *ipso facto* on the abandonment, if indeed, it had ever been interrupted.

The evidence of the so-called "posts in Cuyuni" may, therefore, be dismissed as immaterial in this case, for the reason, if for no other, of their short duration.

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Apart from the question of time, they must also be disregarded as evidence of political control. The posts cannot be considered as constituting in any sense an exercise of political control. This, as already explained, means the exercise of sovereignty through the agency of political government. There is no evidence that the Outlier in Cuyuni, or exercised any functions such as are implied in political control. He was destitute of all the attributes of such control. His duties were merely the supervision of the movements of the Dutch traders who might pass that way, the promotion of trade, especially the slave trade, with the Indians and the maintenance of friendly relations, and general duties of observation and report. Thus, the instructions under which he acted (B. C. II, 168) were to treat the Indians with kindness, and if they asked his help against other Indians to assist them as far as possible, to capture fugitive slaves and to assist the owners of such slaves. In reference to the Spaniards, he was instructed to "be careful not to cause any injury to be done to the Spaniards, who are our good friends, and in all he will maintain good friendship and correspondence with them; but at the same time he will be most careful about the said Spaniards, and if by chance they are desirous of passing to the River Cuyuni or into any territories of our colony and cause any inconveniences, the chief of said post or guard shall thereupon despatch a man to the Governor's castle to advise him thereof."

These instructions are noticeable in several points.

In the first place, they recognize the fact that the interior territory was frequented by Spaniards, which disposes of the theory that the Dutch were the only white people who traded and traveled there.

Secondly, the fact is recognized that the post on the Cuyuni is not Dutch territory. The instructions speak of the Spaniards who may desire to pass "to the Cuyuni or into any territories of our colony." By the use of the words "the River Cuyuni," the Dutch settlements below on that river were evidently meant. There

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could be no stronger intimation that the Cuyuni above the falls was not regarded as such territory.

Finally, no authority was given to the Outlier in reference to the Spaniards. If they caused any inconvenience, the Outlier was to give notice to the Governor; and no doubt the Governor was apprehensive that they might cause such inconvenience, seeing that neither he nor the Company, after years of correspondence and investigation, had been able to discover any foundation for Dutch title to the territory where its post was situated. The duty with reference to the Spaniards was simply a duty of observation and report, a duty which the Outlier might have performed, had it been for the interest of the Dutch Government, at Santo Thome or in the country beyond the Orinoco. As to trade, the Outlier was instructed to see that the traders had their passports, a provision which, of course, like the prohibition of settlement in 1766 in Barima, applied solely to the Dutch colonists, and which would have been inapplicable to anybody else, as nobody else carried a passport in Cuyuni. The Dutch only carried them because of the restriction upon trade, and because when they passed the lower falls, they left their own territory and entered foreign territory. The Spaniards did not carry them because their trade there was unrestricted, and they were on their own territory. Moreover, the express instructions in reference to Spaniards show that this regulation was not intended to apply to them[1].

[1] The only existing copy of the instructions of Storm to the Outlier in Cuyuni, dated November 29, 1757, is in the Spanish translation which is found among the papers in reference to the capture of the post. This Spanish version is a certified translation of the Dutch copy found in the possession of the Outlier. The copy as printed in V. C. II, 127, is taken from British Blue Book No. 3, p. 248, and unfortunately perpetuates a gross mistranslation of the Spanish, originally printed in the Blue Book, especially in reference to the duties of the Outlier in relation to the Spaniards. It says:

"But at the same time, he will be most careful not to permit the said Spaniards to pass to the River Cuyuni, if by any chance they are desirous of so doing, or in any part of the territory of our Colony; and in case they attempt to molest the official of the said post or guard, he will immediately despatch a man to the Governor's castle to advise him promptly of the same."

The errors in translation have been corrected in the document as published with the Spanish text in the B. C. II, 168.

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There is nothing in all of this savoring in any degree of political control. The West India Company was a trading company, and it required trade agents at outlying points. Even a Government which does not carry on trade for itself finds it necessary to have commercial agents, residing in foreign countries to look out for the interests of its trading subjects. Much more so a Government whose business is trade. The Outlier in Cuyuni was a Government agent in the sense that he was an employee of the Government.

That his powers and duties, though much less extensive in this direction than those of a modern commercial agent, were exercised more directly upon his fellow-subjects was due to the wild and primitive character of the country. But they did not indicate or imply anything in the nature of territorial claims.

For the second post in Cuyuni (that which was shortly abandoned in consequence of a threatened attack of the Spaniards), "Provisional instructions" were framed in Essequibo before the creation of the post, which were to be replaced by other instructions (B. C. III, 136), "later on, when the post shall be in order." Whether these provisional instructions were ever issued or not we do not know. They are only found in the Court's records, and there is nothing to show, as in the case of the first instructions, that the Postholder ever had them. They say in reference to the Spaniards:

> "He shall pay particular attention to the actions of the neighboring Spaniards, take good care to give them no reason of complaint, also see that they do not surprise them, but keep a watchful eye on them, and not allow them on any pretext whatever to pass below the Post, but in case any should be coming direct here to send them to the fort."

Whether these instructions were ever issued or not, one part of them was so carefully carried out that as soon as the "watchful eye" of the Bylier Van Witting, who at that time was in charge of the post, saw a prospect of the coming of the Spaniards, he prevented their surprising him by incontinently abandoning the post.

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The closing phrase not to allow them to pass below the post, "but in case any should be coming direct here to send them to the fort," is somewhat ambiguous. How he could obey the instruction not to allow them to pass and at the same time, if they were coming to Essequibo, to forward them on their journey, it is difficult to see. It may have been Storm's intention when he formulated these instructions to have some soldiers at the post, but he never carried out such an intention. Whatever may have been the meaning of the instruction, certainly the two Byliers, Van Witting and Van Leeuwen, were never in a position to carry it out. As far as they were concerned, the Spaniards who passed that way could be neither helped nor hindered. The only duties that they performed in respect to Spaniards were to keep posted as to their movements, and as soon as they found that they were coming to disappear.

Nor was there any political control exercised by the colonial authorities generally, either apart from or in connection with the Postholders. There was not a grant of land in the whole territory; there was not the semblance of a settlement; there was not an arrest of anybody, even of a Dutchman, as far as the record shows, much less of a Spaniard, or even of an Indian; there was not a single case of the trial of any person, even of a Dutchman, who committed any offence in this territory; there was not a law or regulation governing the territory which was applicable to all the persons in the territory, or to any persons as being in the territory. Though the Spaniards overran the district, even to the falls of the Cuyuni, according to the statements of the Director-General of Essequibo, there was not an attempt made to interfere with them; and in abstaining from interference, the Director-General was acting both under the letter and the spirit of instructions from the Company. The Colony of Essequibo had many officials; there were the Director-General, the Commandeur, the Lieutenant, the Sergeants, the Master Planters, the Secretary, and others. None of these officials, during one hundred and sixty-six years, ever

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made a visit to, or inspection of, the territory in question, or ever even set foot in it. The only employees of the Colonial Government that ever went there were its old negro slaves and other itinerants who acted as traders, and during the nine years of the existence of the three posts its Outliers and their underlings.

While the relation of the Dutch Colony with the Cuyuni did not represent control in any sense, it was peculiarly lacking in all that is necessary to constitute political control of a district.

So much has been said about the posts, in treating of alleged Dutch control in the interior, because there is nothing else to speak about. It is manifestly impossible to speak of this control, whatever it was, as in any sense the control of a district.

Least of all, was this an exclusive political control of the district. The district in question, bounded by what is known as the extreme British claim, comprises the Cuyuni-Massaruni Basin. It is the district which is watered by those two rivers and their tributaries. They, in turn, are tributaries of the Essequibo, although the falls, during the two centuries of occupation of Essequibo, proved an all-sufficient barrier to any colonial extension into the territory. The claim of Great Britain to this district is what is known as the extreme British claim.

The control of this district by the Dutch during one hundred and sixty-six years may be summed up by the occupation of two men, with a negro slave and a half-breed woman, in a palm-leaf hut, at Quive-Kuru, some forty-five miles from the lowest fall of the Cuyuni, for a period of three years, at the end of which time the hut was burnt and the party carried off by Spanish troops, acting under the orders of the Spanish Governor of Guiana; by a similar occupation of a couple of employees from two to three years at a point near the fall, whence they were driven by a threatened Spanish attack; and finally, by a third occupation for three years, just above the fall, the existence of the first and second posts being separated by an interval of eight years.

Against these facts are to be placed that remarkable move-

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ment which proceeded from the Spanish capital of Santo Thome and which, in the face of singular difficulties, beginning as early as the 17th century, extended over a vast part of this territory a chain of mission settlements, until by the close of the next century they had reached a total of more than thirty towns or villages, numbering a population of fifteen or twenty thousand people, with ranches and herds numbering 200,000 head of cattle and horses; and such was still their condition at the date of the acquisition of Essequibo by Great Britain. These mission settlements filled the valleys of the Yuruari and the Curumo and their tributaries. The territory in which they lay was as much Spanish territory as that in which lie the cities of Barcelona, Toledo and Seville. The Dutch exercised no more control in this territory than they did in the three cities that have been named.

The extraordinary progress of the Spanish settlements was achieved largely through the devotion of the missionaries, and in spite of the secret intrigues among the Indians, by which the Dutch, unwilling to make any open claim, sought to compass the destruction of the settlements. Notwithstanding these conspiracies against Spanish authority upon Spanish territory, the settlements prospered and increased, reclaiming little by little portions of the wilderness and bringing it under cultivation. Beyond the advanced lines of settlement the Spanish uniformly claimed the entire Cuyuni district and enforced their authority in it, whenever it was necessary to enforce it. Here they established themselves in the advanced settlements on the Wenamu, the Massaruni, and the Siparuni. Their act in the destruction of the Dutch post at Quive Kuru was as formal and complete an assertion of authority and control in the territory as could be made, and was carried to a point within fifty miles of the Dutch settlements. Beyond this assertion of authority it was not necessary for them to go. Nevertheless, during the whole of the century, they are found, according to the testimony of the Dutch Governor of Essequibo, who took pains to know, patrolling the whole district and

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exercising effective supervision and control even to the falls of the Cuyuni.

The extraordinary statement is made in the British Case (p. 48) that "the circumstances attending this Spanish raid upon the Post in Cuyuni rebut any presumption that the Spaniards were acting in assertion of any right," and in support of the statement it is alleged that no objection to the settlement had been communicated to the Governor of Essequibo, and that "the expedition was undertaken in secrecy and followed by a hurried retreat."

It is not a mere "presumption" that the Spaniards were "acting in assertion of any right" that the British Case must rebut. This question does not depend on "presumptions." The instructions issued by the Commandant of Guayana, after reciting that Dutchmen with others had established themselves in the territory in order to carry on the slave trade, say that

> " . . . for the purpose of putting a stop to these prejudicial troubles, and in order that the good intentions of His Majesty may be attained, by preventing any extension of the claims which the Dutch are every day advancing further in this part of his dominions, I ordain and command Don Santiago Bonalde as Commandant, and Don Luis Lopez de la Puente as Second, to proceed this day to the interior," etc. (B. C. II, 150).

This is what is called a "presumption" that the Spanish are acting in assertion of a right, which "presumption" the British Case claims is rebutted because notice had not been given to the Governor of Essequibo and because the expedition did not send ahead an envoy to inform the Dutchmen of its coming.

The Spanish Commandant was enforcing a claim of right. He was enforcing it on Spanish soil, and he so stated in the orders to the expedition. Who ever heard of such a proposition as this advanced by the British Case? Who ever heard that alien offenders upon the territory should not be dealt with according to the territorial law, but that a notice and a protest must first be sent to their Government? The result of such a protest would have been either nothing at all, or else an interminable discussion

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of rights, during which the post would have remained. There is but one way to deal with an intrusion of this kind, and that is the way in which the Commandant, Ferreras, dealt with it. That the preparations where secret has no bearing upon the case. If they were secret, it was in order that the result might be accomplished and that the act to be done might have some significance. There was nothing secret about the performance of the act itself, or about the participation in it of the Spanish authorities.

Secondly, when Storm complained of the act, not as an invasion of Dutch territorial rights, but simply as an unwarranted attack upon Dutch subjects, the Governor of Cumaná wrote a reply which cannot be said to leave the assertion of right a matter of "presumption." He said (B. C. II, 169)—and this was only a few days after the expedition returned:

"The Commandant of Guayana has forwarded to me . . . a letter which you sent him, claiming the two Dutch prisoners, a negro slave and a half-breed woman with her children, whom the guard dispatched from that fort seized in an island of the River Cuyuni, established there in a house, and carrying on the unjust traffic of slavery among the Indians, in the dominions of the King my Sovereign. As this same River Cuyuni and all its territory is included in those dominions, it is incredible that their High Mightinesses the States-General should have authorized you to penetrate into those dominions, and still less to carry on a traffic in the persons of the Indians belonging to the settlements and territories of the Spaniards. I therefore consider myself justified in approving the conduct of this expedition."

That is a letter which expresses a claim of territorial right. Compare it with that of Storm to which it is a reply, and the difference in the nature of the claims will at once be manifest. Compare it with Storm's application to the Governor of Guayana when he proposed that the latter should take up the case of the offending Dutch colonists in Barima, and the difference between Dutch and Spanish claims will be still more manifest. Compare it, finally, with the Company's instructions to Storm as to make

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no assertion of rights as against the Spanish,—instructions that were written after nine years of fruitless investigation and correspondence.

The Dutch in the Cuyuni had not only failed to assert a claim of right, but they had distinctly suppressed any such claim. The instructions of the Company were that the Governor was not to appear openly in any attempt to thwart the plans of the Spaniards in extending their settlements; that he was not to raise the question of jurisdiction; in short, that he was to do what he can to stop them, but absolutely to avoid appearing in the matter. A claim of right must be open and notorious. The action of the Dutch Company consisted in the absolute suppression of such a claim, and this alone is enough to dispose of the question of adverse holding in the Cuyuni.

In March, 1769, Storm reported (V. C. II, 182):

"I also gave orders that they should be well on their guard at the Post against surprise parties (which, according to all appearances, will very probably be undertaken before long), and that they were to come and report to me as speedily as possible."

In May the report is (V. C. II, 189):

". . . that the Post in Cajoeny had been attacked by the Spaniards; that Jan Wittinge had been killed, and Van Leuwen carried off."

They had not been killed or carried off, but had run away to a refuge nearer to Essequibo, where one presently died, the other being shortly withdrawn.

From this time on no attention is paid by the Dutch to the Cuyuni. There is not a suggestion of a claim, much less of control. No attempt is made to re-establish the post. There is no record of its use, even for transit or trade. The Spaniards may come and go as they please in it. The colony suffers enormous losses from runaway slaves, but these make their escape in all directions, to the south as well as to the west, and its efforts are confined to suppressing the insurrections of those who remain

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and endeavoring to negotiate some kind of agreement with the Spaniards for the restitution of the others.

The operations of the Spaniards throughout the length and breadth of this district were reported from time to time to the Commandeur at Essequibo; and while his reports cannot have included all the acts of occupation and control of the Spaniards during this period, they include so much, and with such particularity of statement, as to prove conclusively the active assertions of Spanish authority and dominion during this period over the entire territory. Supplemented by later Spanish reports, they present a long series of facts, running through the entire history of this period down to the English occupation of Essequibo. In order to understand fully how complete and all-pervading this control was, it is necessary to summarize at this point the conclusive evidence which is presented by both the parties in this controversy upon the subject.

Attention has been already called to the question of the Cuyuni horse trade which arose at the beginning of the eighteenth century, to the prohibition which the Spaniards placed upon this trade in Cuyuni, and to the admission of the Dutch Governor that the territory was Spanish territory and his acquiescence in the prohibition upon that distinct ground, as stated by himself. There is no question that upon this occasion Spain exercised territorial dominion over the Cuyuni valley and that the Dutch recognized her territorial rights in that region.

During the first half of the eighteenth century the Spaniards were actively occupied in developing their system of mission settlements on the tributaries of the Cuyuni. The great extent and influence of the mission settlements in this region has already been noticed. They were made under the authority and direction of the State, and the Governor of the Province of Guayana exercised a constant supervision over them and their necessities. Under the Royal direction, the territory had been divided among the different religious orders. The settlements with which this

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controversy has to do were those assigned by the State to the Catalonian Capuchins.

The missions were under the direct control of the Governor, and visits of inspection were made to them from time to time by him. It is enough to mention as an illustration of these inspections the visit of Governor Espinosa de los Monteros in 1743 (V. C. II, 286–294), in company with the Prefect of the Missions, the report of which mentions the Catalonian Capuchins as having been "appointed by His Majesty for the conversion of the Indians of this Province," and discloses the nature of the supervision exercised over the settlements by the civil, as well as the ecclesiastical, functionaries, each of whom, in their respective departments, were invested with authority by the Spanish crown, and represented and enforced the territorial dominion of Spain.

Of the mission settlements so established by the Catalonian Capuchins, several had been founded and had carried on a flourishing existence for a number of years before we hear any mention of them in the Dutch records. Not until 1746 is an allusion made to them in the voluminous correspondence in the colony of Essequibo. In that year Commandeur Storm writes to the Company to inform it of a mission, together with a small fort, erected by the Spaniards up in Cuyuni (V. C. II, 96), and "that they were busy making much brick there, with the intention next year to found yet another mission and fort some hours nearer, farther down this river, [while] all the Indians coming away from those parts, are fleeing this way and praying for protection," which was doubtless true, as it was in 1746 and 1748 that the missions of Palmar and Miamo were established.

Toward the close of 1748 Storm's attention is again called to the Spaniards in the Cuyuni basin. He says, December 2, 1748 (V. C. II, 101):

"The Spaniards were beginning to approach more and more up in Cuyuni."

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In 1750, on the occasion of Storm's visit to Holland, he said (V. C. II, 106):

"It is urgently necessary that the limits of the Company's territory be known, in order successfully to oppose the continual approach of the neighboring Spaniards, who, if they are not checked will at last shut us in on all sides, and who under pretext of establishing their missions are fortifying themselves everywhere. And, because the limits are unknown, we dare not openly oppose them as might very easily be done, by means of the Carib nation, their sworn enemies."

On Storm's return, in 1752, he had to report not only the advance of the missions, but the driving away of the Indians in the Cuyuni territory. He said (V. C. II, 109):

"The Spaniards have attacked and driven away the Caribs below Oronoque, and these have all retreated to our side" (that is, the Dutch side of the territory).

In 1755 he made his sixth appeal to be informed as to the boundary, and reported (V. C. II, 119), that "they [the Spaniards] have now taken complete possession of the creek Orawary, emptying into the Cuyuni, which indisputably is your territory"—always upon the theory that the tributaries of the Cuyuni, as well as the Cuyuni itself, belonged to the Dutch.

It was at this very time (1750) that the missions suffered from the severest blow which they had to encounter during their whole history. The correspondence of the Dutch Commandeur with the West India Company shows at whose instigation the blow was dealt and by what means the attack was brought about. No fouler act of treachery was ever planned by a civilized Government, and the correspondence reveals the entire scheme from beginning to end in all its naked deformity.

But Storm's conspiracy was not an exercise of political control. His secret mode of action negatived the idea of political control; even though early in 1750, three of the most flourishing missions, Miamo, Yuruari and Curumo (V. C.-C. III, 374), and later in the same year two others, Tupuquen and Cumamo (V. C. II, 339), were destroyed by the Caribs. Most of these were suqsequently

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restored, Miamo and Yuruari as early as 1753; some not for several years later.

In view of these facts, it is not to be wondered at that Alvarado, who was a subordinate of Iturriaga in the investigations for the Spanish and Portuguese Boundary Commission, coming to Guiana, as he had, immediately after these occurrences, and while the blackened ruins of the missions he was to inspect were still standing, should have been so deeply impressed by these catastrophes, which it was more than suspected had been instigated by the Dutch, as to have said, in a report of 1755 (B. C. II, 107) that the missions were "more in the hands of the Dutch than in those of their proper owner."

The statement is only important by reason of the reference to it in the British Case, where it is made, as it were, a foundation for a suggestion that in some way or other the political control of the Dutch extended over these missions. Such is obviously not the meaning be conveyed by Alvarado, and such a conclusion is entirely contradicted by the facts of history as disclosed by both Dutch and Spanish authorities.

The next advance of the Spaniards is far more serious. This is reported with great detail in 1756 (V. C. II, 121-2), and bears out the prediction made several years before and already referred to, that the Spanish would extend their settlements in a circle by the headwaters of the Cuyuni and Massaruni. Three "strongholds" were reported as having been established, those on the Wenamu, the Massaruni and the Siparuni. These settlements or posts lay far to the east of the mission valley.

It was just about this time that Storm, in his endeavor to counteract the Spanish control of Cuyuni, set up his feeble post at Quive-Kuru. The attempt was unavailing. In 1758, as we know, the matter was reported by the Prefect of the Missions to the Spanish Commandant, and Captain Bonalde was sent with his troops to repel the intrusion, which he accomplished with thoroughness and despatch. No more conclusive evidence of the

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successful assertion of territorial dominion and habitual control could be given. But the matter does not end here.

In the following year Storm reported (V. C. II, 133) that the occupation of the Spaniards continues, and suggests that the conditions of affairs is such that

" the Colony will be ruined immediately there is the least misunderstanding with Spain. Your Lordships will therefore see that this matter is fully deserving of your attention. The Spaniards continue to stay where they are, and to entrap and drive away all the Caraibans living there."

In 1760, speaking of the desertion of the slaves and the impossibility of checking it, Storm says (V. C. II, 142):

" What I most feared was that they might take the road through Cajoeny where, since the raid upon the Post by the Spaniards there are no more Indians, and there was therefore no means of stopping them."

In a later letter, in the same year, he adds (*Id.*, 142):

" The road to Cajoeny was open to them, because since the raid upon the Post there by the Spaniards the river has not been occupied, and the road to Orinoco is an open and easy one."

He concludes (*Id.*, 143):

" To what will this lead, your Lordships? If such acts of violence are not stopped, what will the results be? The River Cajoeny is still unguarded, and presents an easy road to fugitive slaves. I have not yet reestablished the Post there, always hoping that the matter might receive redress in Europe. I could not act in the matter without using violence, and this I would not do without special orders."

In 1761 matters are growing worse. The Spaniards have come down the Cuyuni even to the very borders of the Essequibo settlement. Storm says (V. C. II, 145):

" Everything in the upper part of the river" [meaning the Essequibo River] " is in a state of upset, the people who live there bringing their best goods down the stream. This is because a party of Spaniards and Spanish Indians in Cajoeny have been down *to the lowest fall* where your Lordships' indigo plantation was situated, driving all the Indians thence, and even, it is said, having killed several. The Indians sent in complaint upon complaint. I fear that bloodshed and murder will come of this because if they come below the fall the inhabitants will surely shoot upon

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them and not allow them to approach, and what will the consequences of that be?"

In the next year, 1762, it appears from Storm's report (V. C. II, 147) that expeditions of the Spaniards to the lowest fall of the Cuyuni have become a regular practice, and that they are keeping the valley of that river under such control as to constitute an effective military occupation. He says:

"They are not yet quiet, but send detachments from time to time, which come down as far as *the lowest fall*, close to the dwelling of your Lordships' creoles, by which both the settlers and our Indians are continually being alarmed, and take refuge each time down stream. This is very annoying. They must have great and important reasons to make such attempts to obtain possession of this branch of our river, and I have not the least doubt that such is the case, but I hope, too, that your Lordships may find a means of stopping them."

It is always THE LOWEST FALL that is given by Storm as the boundary of the actual political control of Spain.

In a later letter of the same year he renews these statements, as follows (V. C. II, 149):

"From the reports received from the upper part of the river, I learn that the Spanish Indians of the Missions continue to send out *daily patrols* as far as *the great fall* (just below which your Lordships' creoles live); all the Caraibans have also left that river, and gone to live above Essequibo."

Three months later he is almost in despair. He says (V. C. II, 151):

"The Indians have also informed me that the Spaniards up in Cajoeny are engaged in building boats. Where will all this end, my Lords? I fear that this may lead to the entire ruin of the Colony (which God forbid) unless rigorous measures are taken. Our forbearance in the matter of Cajoeny makes them bolder and bolder. At the time of that occurrence the Caraibans were full of courage and ready for all kinds of undertaking; now they are all driven away from there and have retired right up into Essequibo."

In 1763 Storm reports (V. C. II, 154), of the Cuyuni that "the Spaniards have driven away the Caraibans who lived there, and who could apprehend and bring back the runaways."

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Enclosed in a letter of August, 1764, the Director-General sends to the Company (B. C. III, 106), a treatise concerning the Company's trading places, in which he describes at length Mahaicony, Arinda, Cuyuni and Moruca. He says "the third post was on the River of Cuyuni," and he then refers to the attack of the Spaniards and the destruction of the post.

"The reasons that they had," he says, "for such unlawful proceedings must be best known to themselves, because they cannot have the very least shadow to a claim of possession; or it must have been the chimerical pretensions of the priests in these parts that the whole of America belongs to His Catholic Majesty and that all other nations hold possession merely *precario* and by permission" (p. 109).

In the same report occurs (p. 111) a very significant statement of the Director-General:

"If we ever desired to follow the example of the English and French, the posts of which I have spoken would be absolutely necessary and indispensable; and if this matter is not taken in hand, our neighbors will quietly approach and surround us, and finally, without exercising any violence, drive us from the country. This is what is already beginning to be observed; and what can we expect from the numerous arrivals of settlers in Cayenne and the removal of Spanish people and plantations in Guayana so much nearer to our boundaries? The latter go to work openly, like a proud nation; and they can therefore be better opposed, an open enemy never being so dangerous as a secret one."

Evidently the Spaniards did not find it necessary to suppress their claim of right, and to make opposition "quietly and without appearing therein."

In an undated letter of the same period, he says of the Cuyuni (V. C. II, 157):

"This river is a tract of land along which the Spaniards spread themselves from year to year, and gradually come closer by means of their missions, the small parties sent out by them coming *close to the place where the* Honourable Company's *indigo plantation stood,* and being certain to try and establish themselves if they are not stopped in time."

Here again we have Spanish control extending to the lowest fall.

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In 1764 Storm is endeavoring to re-establish his post, this time, but he meets with difficulties from the start. He says (V. C. II, 159):

"Whatever trouble I have taken, and whatever promises I have made, I have not been able to get any Indians up to the present to aid me in re-establishing the Post in Cajoeny, and without their help it cannot be done, because with slaves it is not only too costly but also too dangerous, so that I am in great difficulties with this work, and the re-establishment of that Post is, in my opinion, of the greatest necessity."

After eight years of patrolling and watching the river, the Spaniards might fairly assume that no effort would be made to re-establish the Dutch Post. Of the third post it does not appear that they were ever aware.

In 1765 he reports (V. C. II, 161):

". . . that preparations are being made to establish a new mission between Cajoeny and Masserouny, that is, in the middle of our land.

"Should this happen we shall be compelled to oppose them with violence, because the consequences of that could only be harmful, and would finally result in the ruin of the Colony. This is certain, that so long as no satisfaction is given by the Court of Spain concerning the occurrence of the Post in Cajoeny, the Spaniards will gradually become more insolent, and will gain ground on us from year to year."

Notwithstanding all these reports on the part of Storm, he never opposes the Spaniards with violence or in any other way.

The old cause of complaint as to the destruction of the post at Quive-Kuru still remains unsatisfied; not only that, but the Company's creole who was taken prisoner at that time is employed as smith at one of the missions, and he says (V. C. II, 161).

"Is it not hard, sirs, that one must look on patiently at such robbery and endure it?"

One cannot help feeling considerable sympathy with Storm in his anxieties and complaints. The fact is, however, that his course of proceeding in opposing no resistance to the Spanish occupation and control of the Cuyuni basin down to the falls was in pursuance of the deliberate purpose of the West India Company.

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Their Director-General fretted and chafed at inactivity, but the wiser and perhaps more conscientious heads that controlled the policy of the colony, knowing that they had no ground of right, refused to permit any action to be taken which would bring on a collision.

The point, however, with which we are concerned here is the completeness and long duration of the Spanish control of the Cuyuni, of which there had been no interruption whatever since the beginning of the century, when the Spaniards first asserted their rights of territorial dominion by prohibiting the Dutch from engaging in the horse trade on their territory. So far from this dominion being interrupted, it was every year increased and strengthened.

The feeble efforts of Storm to oppose the territorial authority of the Spanish crown by the second post were as unsuccessful as those at Quive-Kuru. Even Dutch influence with the Indians, of which so much has been urged, has now disappeared. In June, 1767, Storm had reported (V. C. II, 170–1), the post ready; but he stated at the same time

"that the Indians are being bribed and incited to such a degree that they are unwilling to do the least thing for the Postholder, and that *even* when he orders the passing boats to lie to to see whether there are any runaways in them, they obstinately refuse to do so, and when he threatens to shoot upon them they reply that *they have bows ahd arrows with which to answer.*"

In 1769 Storm reported (V. C. II, 180):

"It is finished now, my lords; neither Postholders nor Posts are of any use now. The slaves can now proceed at their ease to the Missions without fear of being pursued, and we shall in a short time have entirely lost possession of the river Cajoeny."

It appears that for all practical purposes the post was absolutely useless. In March, 1769, Storm said (V. C. II, 182) that

"the road for the runaways is now quite open and free, it being impossible for the Post in Cajoeny to stop them, there being a number of inland paths; nor can we be warned in any way by Indians, there being no more of these in that river. They did begin to settle there again when the

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post was re-established, but the raid made by the Spaniards last year, when a large party of Indians were captured and taken away, has filled the rest with terror, and they are gradually drawing off."

In the same month, a little later, he said (*id.*, 183):

"My opinion has always been that they would gradually acquire a foothold in Cayuni, and try to obtain the mastery of the river, *as they now practically have done at the end of the past year.*"

By his confession, therefore, the Spaniards have practical possession of the river.

Rumors now began to reach the Governor of a projected attack upon the post; in fact, the valley of the Cuyuni was full of them. Storm, however, did nothing to reinforce it, having evidently made up his mind to leave the two Byliers to their fate. Other rumors came, more precise in their character.

The Director-General, March 23, 1767 (V. C. II, 169), wrote to the Company that his creole

"had reported that he had heard from a few Indians that a party of Indians had been sent by the Spanish Mission to make a raid upon the Post, and had completely sacked it, and that he was going to find out how true that was."

As it turned out, no attack was made, because none was needed. The threat of attack was sufficient. Before the attack could be made the two Byliers had concluded that discretion was the better part of valor and had fled precipitately, without waiting for Storm's permission.

Their last refuge was in the neighborhood of the Dutch frontier and in an isolated position on an island between the falls. Here the Spaniards did not interfere with them, if indeed they were aware of their existence. This post was abandoned three years later. While it lasted it offered no opposition to the exercise of Spanish dominion. From this time on, the Dutch archives take no further heed of Cuyuni.

For the remaining period, the evidence must be found in Spanish reports. These show a continuous enforcement of political control.

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In 1787 Mariano de Cervera commanded (V. C. II, 446) an expedition to the Cuyuni against certain hostile Indians, of whom he succeeded in capturing a large number as prisoners.

The immediate supervision of the Cuyuni valley was at this time in the hands of the able and intelligent Adjutant-Major of the Spanish forces in Guayana, Lopez de la Puente (V. C. II, 448). In 1788, he made an extended inspection of the mission settlements, from Alta Gracia as far as Cura, on the lower Yuruari, including Upata, Santa Maria, Carapo, Guascipati, Tupuquen and Angel Custodio. Six or seven leagues from Cura the new settlement of Tumeremo had been founded two years before, with a church and a cattle farm (V. C. II, 457).

In the following winter, De la Puente passed three months in Cuyuni. He was there from November 7, 1788, to February 5, 1789, and a minute journal of this expedition is preserved to us (V. C. II, 462–467). In the course of his operations, he apprehended an Indian chief named Manuyari, who was living on the borders of the Dutch colony at the falls of Cuyuni, which here again appears as the frontier. Manuyari was a scout in the employ of the Dutch; and partly on this account and partly because of acts which he had committed in the Cuyuni valley against the Indians living there, the Spanish authorities desired to take him into custody. He had also stolen an Indian woman from Panapana. The expedition had four boats and a corresponding force of troops. It proceeded down the Yururari into the Cuyuni, passed the mouth of the Curumo and continued on its journey, until it reached the Camaria rapids, the head of the lowest fall on the Cuyuni. Here a detachment captured Manuyari, with the woman whom he had stolen and ten other prisoners.

Immediately after de la Puente's return the Governor of Guayana, Marmion, decided to establish a village and fort at the mouth of the Curumo, where it empties into the Cuyuni, and on the southern or right bank of the latter river (V. C. II, 471). His recommendation received the royal approval (V. C. II, 478), and

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in 1792-3 the fort was built and occupied, and a sergeant placed in command of the garrison (V. C. II, 479).

From this time on the fort in Cuyuni was regularly maintained. No notice was taken of its establishment by the Dutch.

In 1800 the report of the garrison at Guayana, numbering 357 soldiers, showed the force still at Cuyuni in command of a sergeant (V. C. II, 485), with a detachment of troops as a garrison, and a similar return shows the same condition in 1809 (V. C. II, 486). So matters continued until the war of independence broke out in Venezuela.

The history of Spanish control in the Cuyuni-Massaruni basin has now been traced during the whole period of the Dutch occupation of Essequibo. Side by side with this history we have the history of Dutch movements during the same period. The latter were not in any sense attempts at control. There were no pretensions to territorial rights. The Home Government forbade the making of any such claims. It was the hope of the West India Company that this district might be neglected by the Spaniards; that it might attract the enterprise of the colonists; that the advance of the Spaniards might be checked by the Indians, and that gradually and unobserved the Dutch might succeed in obtaining some footing therein. In all these hopes they were disappointed.

Comparing the insignificance of the measures taken by the Dutch in reference to the Cuyuni-Massaruni basin with the systematic policy pursued and carried out by the Spaniards, we find that the latter maintained throughout the entire eighteenth century close and effective supervision and control over the whole of this territory, a large part of which, certainly ten thousand square miles in extent, they filled with populous and prosperous settlements, which were constantly advancing further and further into the interior. All of it they effectively guarded. They uniformly maintained a claim to the territory, and defined the frontier as being at the Essequibo, exercising authority to the lowest fall of Cuyuni. This frontier they effectively held.

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The above facts effectually dispose not only of the question of exclusive control on the part of the Dutch, but of control of any kind whatever. From the time when the Essequibo Governor submitted to the prohibition of trade in the interior territory, on the ground that the territory was Spanish, down to the end of the century, when all reference to this district disappears from the Dutch archives, the story is one of continuous Spanish dominion and control, uninterrupted by any serious resistance on the part of the Dutch.

In view of the above facts, which are here narrated in the very language of the contemporary records, one cannot but read with astonishment the extraordinary statement contained in the British Case (p. 32) that

"At the time of the Treaty of Utrecht (1714) the Dutch had established themselves as the masters of a great part of Guiana, from various positions on the coast as far as Barima to the Pariacot Savannah beyond the River Cuyuni in the interior of the country, and they were already opening up the higher reaches of the Essequibo."

The grounds for this sweeping assertion are that

"Their plantations and settlements lined the banks of the Essequibo, Massaruni and Cuyuni for some distance from the junction of the three rivers. They had established friendly relations with the Indian tribes of the interior, who looked to them as their arbiters in tribal disputes, and offered them assistance in time of hostile attacks."

Equally surprising is the following statement of the British Case (p. 49):

"The Spaniards never occupied the Cuyuni. It was expected by the Spaniards that the Dutch would at once reoccupy the post. In fact they did formally reoccupy the Cuyuni with a Post in 1766. They would have reoccupied it sooner had it not been that all their available energies were temporarily diverted to assisting in the suppression of a negro revolt in Berbice While there was no Post provisional arrangements were made for watching the river."

As to the statement of the British Case that the "Spaniards never occupied the Cuyuni," reference need only be made to the evidence annexed to that case which has been quoted in the foregoing page.

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As to the reasons why the Dutch delayed in occupying the post, these are entirely beside the question.

The last statement, that "while there was no post, provisional arrangements were made for watching the river," refers to the fact that one of the Company's old creoles, Tampoko, was directed to stay near the lower falls and observe the operations of the Spaniards. (B. C. III, 131.) How well he observed them, and how complete and extensive they were, the correspondence of the Director-General conclusively shows; and the fact that he was enabled to watch them at the lower falls shows how extensive was the patrol of the Spaniards, and how completely the falls were regarded as the territorial frontier.

The British Case states (p. 61) that the projected erection of a fort at Curumo was approved in 1791 by the King, but that a despatch by Marmion in October, 1793, shows that the erection of the fort had not yet been commenced, and that no part of the scheme was ever carried out. This last statement, that no part of the scheme was ever carried out, is directly contrary to the fact. The fort, as already stated, was built and the garrison maintained there at least as late as 1809.

It is inexplicable that, in view of the conclusive evidence presented, the British Case should still deny the existence of the fort on the southern bank of the Cuyuni at the mouth of the Curumo. This error in the British Case is referred to at p. 66 of the Venezuelan Counter-Case. The persistent error in the note to Marmion's report of 1793, where the word *Orinoco* is substituted for *Curumo*, made it necessary to print in the Appendix to the Venezuelan Counter-Case, vol. 3, p. 147, a photographic copy of the original document, where the name appears plainly as *Curumo*. The statement by Marmion in 1793 is that "a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Curumo," and the existence of the fort is beyond contradiction.

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(4.) Coast Territory.

In the discussion of settlement in Barima reference was made to the presence of the Spaniards in this district from a very early period, and it was shown that long before the Dutch had settled in Guiana, even as early as the sixteenth century, the Spaniards were familiar with the region, were trading there in Indian slaves, and were frequently passing back and forth between Orinoco and Moruka or Pomeroon, whence they could go by sea to Essequibo and other points on the coast, where they either had settlements or obtained food supplies for Trinidad and Orinoco.

All these facts belong to a period of history when the records of what was done by individual traders are of the most meager description. Such was the condition of affairs when, in 1648, the Treaty of Munster confirmed to the Dutch their possession of the trading post at Essequibo. From this time on we have the records of that post, and of the colony which grew up around it. These records surpass in extent and fullness, we venture to say, those of almost any other colony in the New World.

It may therefore be assumed that any acts of political control, or even acts not implying such control, connected with a general movement of trade, or with Indian relations, of any consequence, which were performed by the Dutch will find a record in the Dutch archives, and the absence of such a record shows that no such acts took place.

1. *The Dutch trade with the natives did not extend to Barima.*

While the Dutch from the beginning showed considerable activity in trade with the Indians of the interior, they for a long time showed none at all in trade with the Indians of the coast, except on the Pomeroon River. Here their energies for the time being began and ended. Except for a single occasion, in 1673, when Rol reported (V. C. II, 36) that "peace had been made between the Caribs in Barima and the Arawaks," "and he

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was going to send a boat after carap-oil," not an allusion is made to Indian trade in Barima until 1683.

Nor, as a matter of fact, did the Dutch ever carry on trade with the Indians of Barima. This singular fact is to be noted throughout the whole history of the Dutch colony.

In 1683 Barima is by implication, but distinctly, referred to as a place where up to that time the Dutch had had no trade. When Beekman, in that year, tried to bring about peace between the warring tribes in Cuyuni, he reported that they threatened to go to Barima if he interfered with them (V. C. II, 44). And early in 1683, in speaking of their repulse of his offer of good offices, wares and other inducements, he said that "they meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade which the French from the islands carry on there."

It is evident that Beekman had as yet been unsuccessful in establishing satisfactory relations with the Indians of Barima, though he had the development of this trade in mind; and it is not surprising, therefore, to find in this year and the next peculiar attention directed by him to Barima and peculiar efforts made by him to initiate a successful trade there. These efforts have already been considered with reference to settlement. Here they must be discussed on their bearing on political control.

Thus, on December 25, 1683, he reports (V. C. II, 45):

"In Barima I have had one of the Company's servants take up his abode, since there is much annatto and letter-wood there and it is close by Pomeroon."

He goes on to say:

"Recently, too, it has been navigated as many as two or three times by Gabriel Biscop and exploited with great success, much to the prejudice of the Company. I hope this will meet your approval. That trade, both there and in Pomeroon, I have forbidden to him, and to all others as well. I wish you would take that river also into your possession, as has

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provisionally been done by me, in order to see what revenues it will yield, since I am of opinion that the Company can do as good a trade there in an open river as can private individuals."

Biscop was a Surinam Dutchman, and Beekman, finding that the trade in Barima was promising, as he had already found about that from Pomeroon, forbade Biscop and other Dutch interlopers like him from engaging in the trade in both places. His prohibition was not enforced; and in his very next letter, written three months later, March 31, 1684 (V. C. II, 45), he said:

"But Gabriel Biscop and other sea-rovers from Surinam not only spoil that trade, but buy up all the letter-wood, which is there fairly abundant and good, together with the carap-oil and hammocks, as a result of which I have obtained this year only very few old and bad ones; they traverse and overrun the land even into the river Cuyuni."

He said:

"I wish you would take that river also into your possession, as has provisionally been done by me, in order to see what revenues it will yield, since I am of opinion that the Company can do as good a trade there, in an open river as can private individuals."

Beekman's meaning here is clear; the river Barima is open to general traffic; anybody can go in there and trade; that being the case, the Company has a right to go in there as much as anybody else; therefore he asks that the Company will take the river into their possession, for purposes of trade.

What Beekman proposes here is evidently not territorial acquisition. All that he is talking about is the operation of trade in a certain locality in Spanish territory which was open to general trade. He evidently did not regard the region as Dutch. His language forbids such a supposition. His idea is to take the river into possession of the Company as against other Dutchmen for purposes of trade, which he has done provisionally. When included by the Company's regulations within the territory restricted to its own trade, it was, in the sense of the charter, "taken into possession" for trade purposes.

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In his letter in the following March (V. C. II, 45), he renewed his suggestion about the Barima, and stated his plan of erecting a shelter, to be visited occasionally by the Outlier in Pomeroon. He said:

"It would, therefore, if I may suggest, not be amiss if the West India Company, *in order to obtain the aforesaid trade*, should take that river Barima into possession, and should establish there a permanent outliership."

This is the same suggestion as that previously made, in Beekman's letter of December 25, except that it is more definitely connected with trade.

This authorization was never given. In the petulant answer of the Company to Beekman, dated August 24, 1684 (V. C. II, 48), they condemned nearly everything that he had done or suggested, intimated that he or others "helped themselves to the profits" of the Orinoco trade, and found it advisable "that you stop it."

This ended all Beekman's schemes with reference to Barima, and it therefore is of little moment whether the proposed "taking into possession" related to trade or to territorial acquisition. Two years later Barima was entirely cut off from the Essequibo colony by the establishment of the second colony at Pomeroon, under De Jonge, Beekman's personal enemy. De Jonge gave no attention whatever to Barima, being fully occupied with the wants of his struggling colony at Pomeroom. In 1689 this colony was destroyed by the French from Barima; the property was removed to Essequibo, and there were left at Pomeroon only three men with a flag for the maintenance of the Company's possessions.

It is an extraordinary fact, and one of the utmost significance in this inquiry, that from this time, during the whole history of the Dutch colony, lasting for over a century, hardly another allusion is made in the evidence to trade with the Barima district. A great deal is said about the Orinoco trade carried on through

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Barima, which will presently be referred to; occasional allusion is made to fishing near the Waini and in the Orinoco, but, with the isolated exceptions named below, not a word about trade in the Barima district.

This is peculiarly noticeable in the various Journals recording the daily events which came under the notice of the Commandeur, and especially the voluminous Diary of 1699 to 1701, printed in full in B. C.-C., 47–158, where it covers over 100 pages. This "Official Diary" records with extraordinary detail everything that came under the notice of the Commandeur and the Secretary or in which they took part. It records the movements of all the Company's old negro traders, stating when they left the colony, where they went and when they returned; it tells the movements of the Postholders, and what supplies they obtained in the way of trade at their posts, including those at Demerara, Mahaicony and Pomeroon; it mentions the Indians who came with wares of various kinds to Fort Kykoveral, stating what they brought and how they were paid; it details the movements of the Company's yacht, of the coast-guard, of its master planters on the Company's plantations, of the various negro slaves engaged in mechanical work; it tells of the issue of passports to planters and others going out of the limits of the colony, and in several cases of the issue of such passports for the Spanish trade with the Orinoco. It indicates that the three Postholders (Demerara, Mahaicony, and Pomeroon) carried on steadily a trade, not apparently of any considerable volume, however, at their respective posts, and it states that on a single occasion, on November 11, 1699, the yacht "Rammekens" was sent to the Waini (evidently referring to the sea-coast at the mouth of that river) to salt fish and to trade for victuals, but arrived on December 29 "with a very bad catch and without having done any trading" (V. C. II, 65). Except for this, there is no reference whatever to the district between the Moruka, the Orinoco, the mountains and the sea. It is not once mentioned. The name "Barima" does not occur in the Journal,

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nor does any substitute or equivalent for it occur. When it is remembered that this Journal has full, minute and extensive daily entries for two whole years, the absence of such a reference is conclusive proof that the colony of Essequibo had nothing whatever to do with trade in that district.

The Journal is mentioned particularly in connection with this subject because its minuteness is such that here if anywhere, reference would inevitably be made to Barima trade, supposing that any such trade existed.

The negative evidence from the whole Dutch correspondence is equally strong and conclusive. It nowhere states a single case of trading, after 1684, by the colony or the colony's agents in Barima during a period of over a century; or, with one exception, by the settlers of Essequibo. The trade with the Spaniards in the Orinoco is frequently mentioned, but this was not trade with Barima; it was merely the use of the district as an avenue for intercolonial Dutch and Spanish trade, a use to which it was put by both the Dutch and Spaniards and, as will presently be shown, much more by the Spaniards than by the Dutch. The trade at the post of Pomeroon or Moruka is also frequently mentioned; but this trade, again, was not trade in Barima, it was a trade carried on entirely at the post itself.

The single exception which has been referred to is the following:

A certain settler named Cauderas in 1735 (B. C. II, 20–21), having received a permit to collect some debts of a deceased comrade which were owed to him by Indians said to have been in the Barima, took the permit, together with some red slaves belonging to his late comrade, and went off to Martinique. Here he associated himself with some Martinique Frenchmen who were in the habit of trading in Barima, and went back with them to that locality. In the course of his wanderings he came into the Essequibo River, whereupon the Commandeur put him in jail.

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This is the sole base of Essequibo trade in Barima from the beginning to the end of the 18th century.

In 1744, Commandeur Storm proposed to the Company the establishment of a post in Barima. This is the first proposal of the kind that had been made since that of Beekman in 1683, which the Company had declined to adopt, since which time, as the records show, the subject of Barima had not engaged the attention of the Colony,

The proposal of Storm, in 1744, had a very different origin from that of Beekman, in 1683. Its primary object was the recovery of runaway slaves, who took that course to the Orinoco. He said (V. C. II, 95):

"The chief of the said Indians has offered me to answer for all the runaway slaves of this colony who make their way toward Orinoco, in case I would establish a postholder in Barima."

This, then, was the object of the newly projected post, as it was likewise one of the chief objects, it will be remembered, of the post established eleven years later in Cuyuni.

Storm also said, incidentally, that the post "would be of great utility for the buying up of boats and slaves," and he added: "I have not yet ventured to undertake it without your orders."

It is not necessary to seek far for the reasons why the Indians wanted a post in that immediate neighborhood, when one remembers the rum which was always on tap at a Dutch post for every Indian caller. As Professor Burr says (V. C.-C. II, 127, note):

"This estimate of the persuasive power of Dutch rum rests not alone on the complaints of the Spanish missionaries, but on the solid evidence of the accounts of the Company's plantations against the Company's posts for the supply of this necessity. Its consumption at the Moruca post, which lay nearest the Barima Caribs, was especially large, and was expressly justified by this need of hospitality to the Indians. As at the governor's residence, so at the posts, no Indian was suffered to go thirsty away. Even when in 1803 (April 26) Governor Meertens humanely urged placing

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over the Postholders 'Protectors of the Indians,' he suggested that these Protectors be authorized to purchase 'the necessary rum and molasses' for the welcome of the Indians, and pointed out that 'the Postholders should also be put in a position to give a glass of rum to the Indians who should visit them. Even the consoling qualities of spirits were not unknown, for in the same governor's journal (April 9, 1803), we find an order to his quartermaster to deliver 'to certain Indians whose father and brother were lately shot dead in the expedition against the bush-negroes,' two jugs of rum, some codfish and six flasks of wine. The Spanish missionaries complained especially of their powerlessness with the Indians against this Dutch means of allurement."

Numerous references might be given to show the practice of distributing spirits to the Indians at the Dutch posts. Thus, the gratuity delivered in goods, mentioned in the Minutes of the Court of Policy, 22nd February, 1803 (B. C. VI, 180), includes eighteen cases of gin. The Journal of the Commandeur, 1699 to 1701 (B. C.-C. 47–158), frequently refers to the "refreshment" given to Indians; and upon this point the British Case (App. VII, 181–183) gives some statistics, under the head of "Delivery of Kiltum" (rum), from which it appears that the Company's plantations supplied a part of the rum consumed at the posts. Thus one of the plantations in six years supplied 330 gallons to Moruca and Arinda. How much they had from other sources is not shown. An extraordinary statement occurs in reference to the plantation Duynenburg, in 1778, as follows:

"August 8th.—To the Indians in their revels, by order of the Director-General .....176 gallons.

"November.—To the Indians who have been fishing .....15 gallons."

Other items occur from the other plantations.

It was evident that protection and trade were not the moving considerations in the Indian desire for a post in Barima. When by order of the Director-General, one hundred and seventy-six gallons of rum could have been delivered to the Indians in one day, to be consumed on one occasion, and officially stated in the returns to be for use "in their revels," and when the accounts of a single plantation show frequent shipments of rum

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to the Moruca and Arinda posts, amounting in six years to nearly 330 gallons, the fascinations of a "post" near by are not difficult to discover.

In August of the same year, 1744, the Company gave a rather non-committal reply (V. C. II, 95) to Storm's proposal of a post in Barima. It did not in terms approve or disapprove, still less did it order, the establishment of the post. It merely said:

"As for establishing a postholder in Barima for the purpose stated in your letter "[meaning the recovery of runaway slaves]," we are not averse to your making a trial."

Two years later, in 1746, Storm reported (V. C. II, 96) that he had not yet established any post in Barima. This is the last reference of any kind to the project. The post was never established. No muster roll of the colony ever refers to an employee in Barima.

In 1757 Storm reported (B. C. II, 131) that complaints had been made by the Commandant of Orinoco from time to time of "the evil conduct in Barima of the traders, or wanderers, as well from Surinam as from here. I have written circumstantially to the *ad interim* Governor there, Mr. I. Nepveu [the Governor of Surinam]."

This is the only action which Storm took in the matter, and it plainly shows that the Surinam Dutchmen were the offenders referred to. No suggestion is given that any offenders from Essequibo were discovered by him, and the phrase in his report was no doubt derived from the language habitually and somewhat loosely used by the Spanish authorities in speaking of Dutch offenders in its eastern territory, as, for example, in the instructions of Valdes to Flores, in 1760 (B. C. II, 187), to apprehend "the Dutch settlers in the adjoining colonies of Essequibo and Surinam," in which case the evidence shows that no traders from Essequibo were concerned.

If any Essequibo colonists were really the objects of complaint by the Governor, they must have been those engaged in the

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Orinoco trade, who, as we know, were not infrequently arrested in the lower Orinoco or Barima by the Spaniards, and as to whose cases the Spanish Governor ingeniously forestalled any complaint on the part of the Director-General by himself complaining in advance of their conduct. This is confirmed by the fact that it was only in January of the following year that the Secretary at Essequibo reported to the Company that a canoe sent to the Orinoco in September for mules did not return for over two months, on account of the drought, and at the same time the quasi-Dutch adventurer Courthial was seized by the Spaniards in the Orinoco and deprived of all he had.

Subsequent to 1684, with the exception above mentioned, not an allusion to the subject of Barima trade is to be found in the evidence down to the transfer of British Guiana to the English in 1814. This fact of itself is sufficient to show that no such trade existed, and there are two or three other facts which confirm this conclusion.

In 1754 Storm reported (V. C. II, 116), in speaking of the Spanish activity in the Orinoco, that several vessels and canoes had arrived there and that "the Surinam wanderers and most of the Carib Indians have retired from Barima, and have departed to the Wayne."

This statement shows that at the time there were no Essequibo traders in Barima. Storm is describing a general movement out of Barima, both of Surinam Dutchmen and of Indians, in consequence of the Spanish activity in that quarter. Had there been any Essequibo traders in Barima at the same time, they certainly would have moved off along with the others, and Storm would unquestionably have mentioned the fact, as a matter of far more importance than the movements of the Surinamers.

In the affidavit dated September 29, 1760, of Yana, the half-breed Arawak from Wacupo, who was captured by Lieutenant Flores in a fishing boat in Barima in that year, the deponent

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stated (V. C. II, 30), with reference to the "Dutch settlers from the adjoining colonies of Essequibo and Surinam," who had been reported as buying *poitos* in the river:

"That the Hollanders that purchased Poytos do not belong to the Esquivo Colony, but to that of Surinam, because in that of Esquivo the Governor does not allow any Hollander to come out and make this kind of trade."

It may, therefore, be taken as a fact proved by the evidence in this case that the Dutch of Essequibo did not carry on trade with the natives of Barima in that district; that whatever trade they had with such natives stopped at their frontier, namely, at the post of Pomeroon, Wacupo or Moruca, and that the only exception to this condition of affairs, otherwise lasting over a hundred and sixty-six years, from 1648 to 1814, was during a part of the two years 1683 and 1684, when the Commandeur, Beekman, interested himself in the subject, and when the post at Pomeroon had only just been established, and the isolated case of Cauderas above mentioned.

The statements in the British Case (pp. 80–81) in reference to trade in the Barima which seem to imply that the Essequibo Dutch were in the habit of trading with the natives in that district must be carefully examined.

The statement is first made that:

"In 1673 the Dutch were trading to Barima for crab-oil, and between this date and 1684 there are several other references in the Dutch records to trade carried on between Essequibo and this district."

It is true that Rol, in 1673, stated, at the place named (B. C. I, 173) that:

"Peace had been made with the Caribs in Barima and the Arawaks, and they had intercourse with each other, and he was going to send a boat after carap-oil;"

but it must be repeated, as stated before, that with the exception of this one statement, that Rol was going to send a boat after crab-oil, no allusion is made to Indian trade in the Barima until 1683.

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If it can be said from this statement that "in 1673 the Dutch were trading to Barima," then it is drawing a very large conclusion from a very small premise. Rol does not even say that he carried out his intention of sending the boat, and as no mention is made of the fact, it must be inferred that none was sent.

In 1683 and 1684, when Beekman conceived his large project of Barima trade, the project and the projector were so severely snubbed by the Company immediately after that nothing further was heard of it. There is no reference to Barima trade between 1648 and Beekman's project, in 1683, except the proposal to send a boat for crab-oil there, in 1673. The reference given in the British Case (B. C. I, 181–182), as a reference to Barima trade does not refer to that trade at all. It is a reference to the trade at Pomeroon and to the trade with Spaniards in the Orinoco, but there is no allusion whatever to trade in Barima.

The British Case next states (p. 81,) that in 1726 the Postholder of Wakepo was sent to the Governor of Santo Thome to request leave to trade in the Orinoco, and that if he were refused he was instructed to endeavor to obtain the slaves and balsam he desired in the Aguirre.

This is true, but it is entirely beside the question. It is significant that leave was asked to trade in the Orinoco, but not significant of Dutch sovereignty. As to the Aguirre, that river is not in controversy in the present proceeding. It is as much Venezuelan territory as any part of Venezuela, and whether the Dutch traded there or not is immaterial except as showing that they traded in territories confessedly Spanish.

The same may be said of the next statement in the British Case (p. 81) that

"In 1730 a Dutch trader is mentioned in the Aguirre."

The Case, however, goes on to say that

"In 1735, 1754, 1757 and 1760 Dutch traders were in the Barima."

This must be examined. It would not signify much if Dutch traders had been in the Barima in the four years named. The

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only astonishing fact would be that this was the only trace of them to be found. But, as a matter of fact, only one of the four cases named is in point. This is the case of Cauderas, in 1735 (B. C. II, 20-21), already mentioned.

The second, that in 1754 (B. C. II, 100), is a reference to the statement that "the Surinam wanderers and most of the Carib Indians have retired from Barima." This is not a case of Essequibo traders in Barima.

The third reference, that in 1757 (B. C. II, 131-132), is to the letter of the Director-General referring to the complaints of the Governor of Orinoco, already mentioned, of the conduct of the wanderers from Surinam and Essequibo.

The fourth, in 1760 (B. C. II, 187), is the case of the slave traders in pursuit of whom Flores was sent on his expedition, and, as has been already clearly shown, in like manner referred solely to the wanderers from Surinam.

The statements which have already been made with reference to the absence of any trade with the natives in Barima of the Essequibo Dutch may, therefore, be reasserted, any statement in the British Case to the contrary notwithstanding. In fact, the very statement in the British Case is the strongest confirmation of the position here taken.

2. *The Barima-Waini district, as a means of transit and traffic, was used much more by the Spaniards than by the Dutch.*

The subject of the Orinoco trade of the colony of Essequibo has been already referred to in speaking of settlement. Whatever this trade was, it was not a trade with Barima. Barima only appeared in it at all as affording the avenue by which it was in part conducted, for it was also conducted in part by sea. Thus, on February 24, 1700 (B. C.-C., 88), the Company's yacht "Rammekens" made a trading voyage to Orinoco and Trinidad, returning on June 21 of the same year (*id.*, 105).

The trade with the Spanish settlements in Orinoco, which,

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under the Spanish law, was reserved to Spanish subjects, was a contraband trade, and it was only carried on in collusion with the Spanish authorities, who seem to have derived from it a considerable personal revenue. As might be expected under these circumstances, it was liable to frequent interruptions, and the references to it in the Dutch records, which are numerous, show that its ups and downs followed each other in rapid succession, and that neither the Commandeur nor the Company could well keep track of them.

There is no reference to this trade in the Spanish records, for obvious reasons. Moreover, the Spanish records, being those of an ordinary Colonial Government, are confined almost wholly to matters of military and ecclesiastical administration. Other matters seem to have been treated in general reports, which, made at infrequent intervals, were more like dissertations on general colonial policy then administrative reports in the ordinary sense.

The first reference to the subject is in 1673 (B. C. II, 36), where Rol reports that:

"He had sent some wares to Orinoco for the purpose of trade; by mistake these were carried to Trinidad, and, no opportunity being found to trade there, they had come back home."

From this time, the trade between the Dutch and Spaniards was pursued under great difficulties and with frequent interruptions.

In August, 1684, the Company became extremely dissatisfied with Beekman, as already related, and sent him its caustic letter of August 24, in which it said (V. C. II, 50):

"Concerning the trade to Orinoco, we find it advisable that you stop it, and neither trade thither yourself, nor permit trade thither, directly or indirectly, until further orders; since we are of opinion that the Company bears all the expenses and burdens, and that others help themselves to the profits."

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Beekman, on January 15, 1685, replied (V. C. II, 52):

"That you stop the Orinoco trade is a good thing; that business has always brought in much glory and little gain."

Notwithstanding this prohibition, it appears from the Journal of the Commandeur, from 1699 to 1701 (B. C.-C., 47-158), that the trade was then going on. In 1712, however, Commandeur Van der Heyden reported (V. C. II, 74) that the Orinoco authorities had all at once prohibited the traffic in balsam copaiba, which at that time was the article principally traded in, and that the new Governor had vessels cruising in the Orinoco to confiscate all Dutch vessels which might come thither. "But," he added, "at the present moment the traffic is again free."

In 1720 and the following years the trade with Orinoco had taken on considerable dimensions, especially the horse trade, and it appears to have been carried on, not as previously, by the Dutch at Orinoco, but by the Spaniards at Essequibo or Pomeroon. Late in 1726 the Court of Policy reported (V. C. II, 80) that the Commandeur, with the Secretary and others, had selected a site for a new post at Moruca, and that "they decided that the fittest place was where the horse-dealers from Orinocque generally moor their boats in the river of Marocco, it being possible to build a house there so close to the river side that a hand grenade can be thrown into the boat, the river being at its narrowest there."

Very shortly after, in March, 1727, the Court reported (V. C. II, 81) that some Dutchmen having gone to Orinoco, "the Spaniards took all their merchandise, and told them that they had orders from the Governor of Trinidad to stop the trade in that river."

In 1731 the Company wrote (V. C. II, 83):

"That it is far more advisable for the Company to foster the trade to Orinoco with the Spaniards than to favor this dealing with the English" (referring particularly to the trade in horses).

In 1733 the Commandeur stated (V. C. II, 85) that the need of horses having become great, "I shall by all available means try

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to be helped by the Spaniards," although the Court had previously reported that the trade with the Spaniards "in Rio Orinoco cannot be relied upon".(V. C., II, 84).

All this points strongly to putting the trade as far as possible in Spanish hands.

The Commandeur, having occasion, in 1734, to complain, as he thought, of the Spanish Governor's action in reference to one Reiter, who had been sent to the Orinoco to bring back horses, and who had concluded to remain there, alleging that he was a Catholic, concluded that he would not do anything to interrupt intercourse with the Spaniards, because (V. C. II, 86)

"when one duly considers our situation here, how absolutely we depend upon the Spaniards for the horse trade, because the English bring them no more, this consideration alone would suffice for the maintenance of that intercourse."

In 1734 the Spanish Governor notified the Dutch Commandeur (V. C. II, 87) that "from now on the commerce was at an end," while the Commandeur on his part issued an order that "no more passes to Orinoco will be issued by me, and that nobody whosoever will be allowed to set out without one on penalty of a heavy fine."

Nothing is done, however, to prevent the Spaniards coming to Moruka, with reference to whom the site for the post had been especially selected, and it is, therefore, not surprising to find the Commandeur stating, in November, 1734 (V. C. II, 87), that the "Orinoco trade is again under way."

The whole situation is explained by a letter of the West India Company to Commandeur Storm, May 30, 1748 (V. C. II, 101), in which they said:

"It gave us especial pleasure to learn through a subsequent letter from you, dated September 9, how, by the zeal you have shown, the *trade of the Spaniards in the river of Essequibo begins to develop more and more*, and we hope that all further means will be put in operation to make it altogether flourish there."

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It appears from this last extract that the trade with Orinoco had been practically transferred to the Essequibo side of the district; that the Spaniards were coming there with their wares, and that no further difficulty need be experienced as a result of the presence of Dutchmen in the Orinoco.

It also appears that this was peculiarly Storm's policy. This is confirmed by a letter of March 27, 1749 (V. C. II, 102), in which he said:

"There should sometime be some profit gained with the Spaniards, though the attempt is made as far as possible to pay attention thereto. But many Spaniards, come and go out of the river without coming under my observation;"

and he added:

"In order not to frighten away the Spaniards, I have until now remained quiet in consequence of pressure, and have only ordered the Postholder of Marocco always to advise me when any come, stating their names, and to whom addressed, so that I have always been informed thereof."

In 1753 the Company enjoined upon him to encourage the trade (V. C. II, 109).

So matters remained until 1761, when Storm reported (V. C. II, 120):

"I have always imagined that it was best for our inhabitants to send few or no boats to Orinoco, and so compel the Spaniards to come here with their merchandise; in this way our people would not be exposed to the least danger, and the arrangement began to work very well."

But he went on to say that the jealousy of the colonists towards the Spaniards, by reason of allowing the latter to come to Essequibo, was so great that he was "coerced into taking a course which I really believe to be disadvantageous, and into which I am forced because I do not want to have seven-eighths of the colony against me." For that reason, he had ordered that no more Spaniards be allowed to come up the Essequibo River. It does not appear,

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however, that he prohibited them from coming to Moruca; and he mentioned the arrival of some of them at that place with a large quantity of tobacco.

To this the Company replied, in November of the same year (V. C., II, 146), suggesting that it would be "more profitable to the Company, to direct this trade into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards;" and the Court of Policy, in reply, March 18, 1762 (V. C,, II, 148), reported that the trade carried on by Dutchmen in the Orinoco,

"consists of mere bagatelles, and is considered so risky and precarious that not more than two of our settlers (Persik and Struys) carry on trade with that Spanish river. Their boats are mostly manned by Spaniards, who are intrusted with the business both in cattle and tobacco;"

and they concluded that it was inexpedient for the Dutch colonists to take up the business.

The facts are correctly stated by the British Counter-Case (p. 80), which says:

"The facts are that though in 1760 the trade was practically open, the Dutch Director-General, in March 1761, reported that everything in Orinoco was in disorder, the Commandant having been summoned to Cumaná to answer several charges brought against him; that in the previous year he had, under pressure from the traders of the Dutch Colony, forbidden Spaniards to come to the Essequibo, but considered this measure to be injurious to the interests of the Company; and that, in his opinion, it was best to send few or no boats to the Orinoco, and to compel the Spaniards to come to the Essequibo.

"In November the Company supported the view of the Director-General, and the Court of Policy reported that the trade was a mere bagatelle and also risky and precarious, particularly as England and Spain were said again to be at war, and Orinoco would probably soon be ruined for many years to come. Consequently the trade was purposely suspended by the Dutch."

From this time on there are numerous indications of the prosecution of this trade by the Spaniards and its abandonment by the Dutch.

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In 1763 the Secretary reported (V. C. II, 153) that:

"The uncertainty of how they would be treated by the Spanish is the reason why I have this year sent no boats belonging either to the Company or to myself out salting to the coast of Orinoque."

In the same year Storm reported (V. C. II, 154), speaking of the post of Moruca, that:

"The road of the Spaniards hither leads past this Post, so that no one can go that road without the knowledge of the Postholder, who, therefore, if he wishes, can generally get to know what is going on in Orinoque."

In 1764 he reported (V. C. II, 155):

"Only last week two Spaniards came to me with formal passports from the Governor to come here."

In a memorandum of about the same date Storm (V. C. II, 157), referring to the post of Moruca and to its use in furthering commerce with the Spaniards, said:

"All who do not sail in very large ships having to pass the Post on their journey from Orinoque."

In the same memorandum he added:

"All the Spaniards who come here with mules, cattle, tobacco, hides, dried meat, &c., pass the Post, and stop there for a few days to refresh themselves and their animals. If he [the Postholder] kept a stock of the things that the Spaniards required, the latter would be very pleased to buy them there, and not be obliged to go further."

In accordance with the policy now fully established, Storm, in the instructions issued under date of October 7, 1767, to the Postholder at Moruca (B. C. III, 155) stated:

"7. He shall demand from the Spaniards coming there with tobacco, &c., five per cent. import duty and forward the same."

From this time on not only is nothing more heard of Dutch traders dealing with Indians in Barima, but nothing is heard of them in connection with the Orinoco trade. As will presently be shown, the whole district was effectively occupied and patrolled during the remainder of the century; and as late as

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1794, the Governor-General of the Colony, Sirtema van Grovestins, wrote to the Dutch Council of the Colonies (V. C. II, 248):

"That in the rainy season the Spanish lanchas come from Orinoco so far as Moruca by an inland way, passing from one creek into another, and they transport in this fashion their horned cattle and mules, and find on the way the necessary sustenance for the cattle, both grass and water."

3. *The Dutch exercised no political control in the Barima-Waini district and made there no claim of right.*

It is evident that Commandeur Beekman, when he made his abortive proposal in 1683 in reference to trade in Barima, did not claim any territorial rights in that region. His only idea was to retain his hold on Pomeroon as a frontier. The extensive operations which he records of the French traders in the Barima region at this very time he made no attempt to interfere with. If the territory had at that time been Dutch, he would have put a stop to them, for he records the fact that they were distinctly injurious to Dutch trade.

In 1694, the statement is made by Beekman (B. C. I, 213), that "most of the red slaves come from the Rivers Barima and Orinoco, which lies under the dominion of the Spaniard"—a pretty strong intimation that the *region* referred to is Spanish.

Not a word is heard of Dutch territorial rights in Barima until the administration of Storm van 's Gravesande.

In the chapter of this Argument on the Dutch boundary (Chapter X, p. 309) a detailed history of the boundary discussion as to the coast territory has been given, with citations from the correspondence, and the Counsel for Venezuela would ask that reference may be made at this point to that statement, in order that its significance may be fully considered as showing the entire absence of any claim on the part of the Dutch to territorial control in this district. Without recurring again to those confused and discordant suggestions of claim, it is enough to mention here, as disposing of all such extravagant pretensions as to

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the Waini, the Barima and the Amakuru two statements, both of the highest anthority—made, one in 1749, the other in 1794. The first is the deliberate professional opinion given to Storm by "the foremost jurists of the province of Holland" that Pechy, a point between the Moruca and the Waini, was in Spanish territory; the second, the declaration of the first Governor-General of the colony of Essequibo, after it had reverted to the Dutch Government that the creek of Moruca "up to now has been maintained to be the boundary of our territory with that of Spain."

There is no record that a Spaniard was ever tried, punished, or even arrested by the Dutch, for anything done by him in Barima. There is no record that an Indian was ever punished for anything done in Barima. There is no record even that a Surinam Dutchman was ever punished for anything done in Barima. There is no record that a Postholder ever went into Barima in one hundred and sixty-six years, except when Baudaart went there, in 1683, for a brief season, to endeavor to start a trade there, in which he apparently failed, and when the Postholder, in 1766, went to get Rosen. On one occasion, in 1726, Jan Batiste, the Postholder of Wacupo was sent to trade in the Orinoco, but there is no record that he did anything in Barima. There is no record that any official of the colony ever set foot in the territory in question except upon these three occasions. No regulation was ever made in reference to that territory by the Dutch which applied to foreigners. There is no evidence of any trade carried on by Dutchmen in Barima. There is evidence that boats, most of which, the Commandeur says, were manned by Spaniards, in the employ of two or three Dutchmen pursued a trade to Orinoco; but Barima was simply used as a channel of communication, and the traffic was almost wholly conducted by Spanish boats at Essequibo or Moruca.

It appears from that statement that no control was ever exercised by the Dutch in Barima, and that they never asserted a claim of right to the coast territory with the single exception of

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the fishery at the mouth of the Waini, and that even this they repeatedly contradicted. Even the personal jurisdiction over Dutchmen was only exercised, as far as we know, in the affair of Rosen, and that was after an application for permission to the Governor at Orinoco. Of territorial jurisdiction properly so called, there was nothing. The whole territorial claim of the Dutch to that region began and ended in the mind of Storm, and his opinions on the subject were so various that it is impossible to say what he did or did not claim. The Company evidently did not know what to claim, as appears plainly enough from its letter of 1766 (B. C. III, 137), where it said:

"If that place is really Spanish territory, then you have acted very imprudently and irregularly; and, on the contrary, if that place forms part of the Colony, and you had previously been in error as to the territory, then you have done very well."

Nor was their perplexity remarkable, in view of the fact that at one time or another Storm's correspondence suggested nearly every stream in the region as the boundary, and again with equal emphasis explicitly denied the Dutch claim to each of them in succession.

Such is the character of the Dutch records, that if there had been any jurisdiction over foreigners in Barima, we should have seen the evidence of it again and again. It would not be necessary to discuss the question in reference to one particular incident only; it would have been shown by a multitude of incidents, every one of which would have found its place in the records. The conclusion is irresistible that there was no such thing as political control on the part of the Dutch over the coast territory.

The most positive contradiction of Dutch claims, however, is to be found in the acts performed by the Spaniards in Barima, to which attention must now be given.

4. *Spanish acts of dominion in Barima and the lower Orinoco.*

As the territorial claim of Great Britain in the present controversy includes the right bank of the Orinoco from the Amakuru

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to the sea, as being a part of the coast territory, it is necessary to investigate the acts of dominion performed by Spain not only in the coast territory but upon the lower Orinoco itself.

In the lower Orinoco, Spain asserted her right to regulate trade and to deal with those violating her regulations from a very early period. In 1675 the Dutchman Asseliers (V. C. II, 37) was refused permission to trade, at the time of his visit, but was informed that at a later date the trade would be allowed, and the landing which he was to use was designated.

In 1680 the Spaniards were only permitting this trade to be carried on by canoe (V. C. II, 39).

In 1681 the Spanish authorities caused Laman, one of the West India Company's traders, together with one of his negroes, who were trading to the Orinoco, to be arrested, the trade having then been prohibited (V. C. II, 41, 42).

In 1712, on the occasion of the expedition of Mollinay to the Orinoco to discover some buried treasure reported by the Indians, the Governor of Surinam wrote (V. C. II, 73-74):

"No whites are allowed to enter the Orinoco except with a pass. The thing we have in view could be accomplished only under pretext of trading with the Indians, for which we would need the permission of the commander, of the Orinoco. He was favorably inclined towards us, and if he had remained in command we might have expected everything from him; this was why Mollinay had orders to address himself to him. Now there is another commander who is not willing to allow any one there."

The same change is referred to by the Essequibo Commandeur Van der Heyden, in a letter to the Company of July 31, 1712 (V. C. II, 74), who says, speaking of the balsam trade:

". . . they in Orinoco had all at once prohibited the traffic in it to the Hollanders, these changes having come to pass with the arrival of a new Governor at Trinidad, who, with this object, has caused several manned vessels to cruise in the River Orinoco, so as to confiscate and bring in as good prizes all Dutch vessels who should wish to come thither; that has forced me to put a stop to the journey, since of neces-

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sity I dared not hazard and put in danger on such like a journey the Company's cargoes, slaves, vessels, and other goods."

In 1713 Van der Heyden reported to the Company (V. C. II, 75):

"For a considerable time it has not been possible to carry it [the trade in copaiba] on, because of some dislike which the Spaniards (on whose territory the copaiba is traded in) have taken to our nation; they also have now been cruising after the Dutch boats which go thither; so that I have not dared to risk so greatly the Company's wares and other effects."

It was in the following year, May 14, 1714, that the Company wrote an emphatic reply to Van der Heyden (V. C., II., 76), taking the ground that it had the right to forbid the trade of its Dutch colonists, in Spanish territory—in other words that its personal control of its colonists extended to their acts in foreign countries. In this letter the Company especially recognize Spanish soveignty over the Orinoco.

Again, in the "Memorial of the Free Settlers of Essequibo," May 24, 1717 (V. C. II, 77), Orinoco is spoken of as "a river, which is outside of the territory of the Noble Company, where the same has no more power than a private merchant, which is in the Spanish possession." It added:

"Your Noblenesses are also aware (or at least we suppose so) that Orinoco is a river which is accounted as the property of the King or Crown of Spain, and consequently that nation there master;"

and it referred to the disadvantage that the colonists of Essequibo were under in trafficking in this territory as compared with the Surinam traders, mentioning as the rivers where the latter traded "Marocco, Weijne, Barima, Pomeroon, Orinoco, Trinidad."

In 1727 the Court of Policy reported (V. C., II., 80) that Pieter la Riviere, an Essequibo colonist, had gone to Orinoco to claim some fugitive red slaves; that

"on arriving at the usual mooring place in that river, he was attacked by a vessel flying the Spanish flag, and was unfortunate enough to be

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killed. Those with him begged for quarter, whereupon the Spaniards took all their merchandise, and told them that they had orders from the Governor of Trinidad to stop the trade in that river."

In 1728 the Minutes of the Court stated (V. C. II, 82) that "the Spaniards of the Orinocque had, with armed force, taken possession of a Suriname vessel fishing in the neighborhood of the aforesaid river." Thus early did the Spanish assert their right to the exclusive fishery in the Orinoco and in the neighborhood of its mouth.

In 1731 the Court referred (V. C. II, 84) to "two inhabitants of this colony who, their goods having been taken from them" [in the Orinoco for violation of trade regulations] "and they sent off in a small boat, have perished."

In 1734 the rumor first came that the Swedes were intending to settle in Barima. The position taken by the two colonies respectively—the Spanish and the Dutch—upon this occasion is significant. The Spanish Governor, Don Carlos de Sucre, wrote to Commandeur Gelskerke (V. C. II, 85) that "he has brought some troops to the Orinoco and is expecting ten or twelve more barques with soldiers," and that the reason for sending these troops was "the intention of the Swedish nation to establish a colony in the river of Barima, situated between the Orinoco and your post Wacupo." The Spaniard does not ask the Dutch to coöperate with him. He does not treat the question as if it was a question that concerned Dutch territorial jurisdiction at all; but he suggests that, as the Dutch probably would not like the Swedes for neighbors, the Commandeur might be willing to inform him (the writer) of any news that he heard with reference to the project. His words were (*id.*, 86):

"And, being unable to persuade himself that the Dutch nation could tolerate in their neighborhood a nation so proud and haughty as the Swedish, he in good faith and frankly declares this to be the cause of his arriving with so much soldiery, at the same time earnestly requesting me, if I should have received any advice thereof, to be so good as to share it with him."

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Gelskerke's comment upon this to the Company was that—

"If the Swedes should undertake to try to establish themselves between the Orinoco and this colony on your territory, it would be my duty to prevent this, which could hardly be done with any chance of success with the small military force we have here."

Gelskerke gives no intimation as to what the territory so referred to is; indeed, the words "on your territory" would appear to refer to "this colony," or possibly to the Pomeroon or Moruca, but certainly not to any place west of that point.

The Company, however, paid no attention to his suggestion further than to say that "they can in case of necessity aid you betimes with men and material of war" (B. C. II, 19).

Far different was the action taken by Spain on December 16, 1734, when a royal order (V. C. II, 283), addressed to Sucre, referring to the representation made with respect "to the settlement which the Swedes were attempting to make in River Barima," directed:

"Having considered the matter in my Council of the Indies, and taken the advice of my Attorney-General thereupon, I hereby command you that with what people you have and with the Capuchin Missions, you take all proper measures to prevent the settlement attempted by the Swedish nation from being established."

In 1742 Storm van 's Gravesande became Commandeur in Essequibo, and he continued to occupy that position for thirty years. It was at Storm's suggestion and in consequence of his persistent references to the subject that the West India Company first conceived the idea of any territorial claim outside of the Dutch settlements; but they never were willing to adopt and carry out Storm's recommendation in the matter. It was during this period also, more than in any other, that the Spaniards maintained an effective supervision and control of the coast territory, and a large part of the evidence of this is to be found in the reports made by Storm himself to the Company. He first brought up the subject in 1747. In a letter of that year, referring to the territory between Orinoco and Moruca, he said (V. C. II, 98):

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"But the undertakings of the Spaniards go so far that, if proper provision be not made in that matter, it may cause, in course of time, the total ruin of the colony."

Notwithstanding this opinion, both the Company and Storm, as has been seen, were strongly favorable to putting the trade between Essequibo and Orinoco in the hands of the Spaniards to be carried on at Essequibo or its frontiers (V. C. II, 101), and in 1749 Storm described the frequent goings and comings of these Spanish traders (V. C. II, 102).

About this very period the trade of the Dutch in Orinoco was under the closest prohibition. The Acting Commandeur reported, in 1751 (V. C. II, 108), that Marcand and Schutz, "being on a journey to Orinoco to buy tobacco, * * * they both had the misfortune, the former in April and the latter in May, to be taken by the Spaniards."

No complaint or comment seems to have been made on this act by the Commandeur.

In 1752 Storm reported (V. C. II, 109) that

"the Spaniards have attacked and driven away the Caribs below Oronoque, and these have all retreated to our side, and thus their number has considerably increased."

In 1754 Storm reported (V. C. II, 116), speaking of the activity of the Spanish forces in Orinoco,

"that three barques and nine large canoes have arrived there and have sailed up to the fort, and that the Surinam wanderers and most of the Carib Indians have retired from Barima, and have departed to the Wayne."

In 1755 Storm reported (V. C. II, 119):

"The Postholder of Marocco has come, and has brought me a letter from a missionary Father written to him from Orinoque, wherein he has requested him to deliver up and send to him some Indians of the Chiama nation, by us called Shiamacottee, and who have already (over ten years) been dwelling under the Post, adding that, in case of reluctance, he would come with sufficient force to fetch them, and take them away in chains. The letter has appeared to me a very surprising one."

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In 1758 Storm reported (V. C. II, 123) that

The adventurer Courthial, "having undertaken another voyage to the Spanish coast, in which he was very successful, was watched for by the Spaniards as he came down the Orinoco, and deprived of all he had. He and his crew (with the exception of two, who are prisoners) managed to escape overland, and have now arrived here. The man is almost entirely ruined."

In the same letter he reported the arrival of some mules from Orinoco, and stated that

" . . . no more can be got for a long while, because one of H. M.'s ships is daily expected from Spain, which will stay at anchor in the mouth of the Orinoco. Thus the trade is stopped and even the salters will have to keep away from there until things take a different look."

In 1759 he reported (V. C. II, 133):

" Two well-armed boats have been kept cruising up and down the river [Orinoco], whereby the Spanish trade is at present wholly blocked."

In 1760 the effect of the patrolling of the Orinoco and the Barima became apparent in the capture by Lieutenant Flores of the five boats taken in those waters. The immediate instructions under which Flores was acting in this cruise will be remembered, and the fact that he received the instructions is important, for it will be found that during the rest of this period the Spaniards, in carrying out police authority in Barima, were very active, but that the Director-General always speaks of their acts as if they were the unauthorized acts of private individuals, mere raids or forays. Thus, he is constantly referring to what is done by " the Spaniards," and often describes them as "privateers," or " pirates." In all this the Dutch Governor was entirely incorrect. The Spaniards who made the seizures in the Barima, who patrolled the rivers, and who exercised control over the district were com missioned officers of the Spanish Government, belonging to the army or the coast guard, and acting directly under the orders of the Commandant of Guayana. The instructions of this Commandant, Don Juan Valdes, who is entitled " Captain Warden of this fort on behalf of His Majesty, Judge General of Confisca-

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tions in this Province of Guiana and Commandant of the forces therein, &c.," to the Lieutenant of Infantry Don Juan de Flores are given in B. C. II, 187. From these it appears that some fugitive poitos, escaping from the clutches of Surinam slave traders in Barima, had reported that these slave traders were there and were engaged in their traffic. Flores was accordingly ordered by the Commandant to arrest them.

Owing to the fact that Flores met a number of boats there engaged in salting and fishing, some of them in the Orinoco and some in the Barima, where it was likewise prohibited, his men were needed to man the prizes, and he was unable to go after the slave traders, who, as stated in the affidavit of the half-breed Yana (B. C. II, 194), were from Surinam. The latter therefore escaped.

No more clear and distinct act of territorial authority could be conceived of than these acts of Flores in the Barima. The cargoes of the boats were sold for account of the treasury (V. C. II, 337); the boats were sent to the treasury stores (V. C. II, 338) and subsequently sold for account of the State (V. C. II, 340). The papers show that the whole business from beginning to end was a purely official transaction. No protest was ever made by Storm in reference to these seizures, although in the general remonstrance drawn up by the Dutch Government in 1769 a reference is made to the prohibition of the Orinoco fishery.

In 1762 Storm reported (V. C. II, 148) that the Essequibo settler Dudonjon, having been sent to Orinoco to claim runaway slaves, "the Commandant there, Don Juan Diaz Valdez, not only refused to give him a hearing, but forbade him to set foot on shore, ordering him to depart at once."

In August of the same year, Spoors, the Secretary in Essequibo reported (V. C. II, 150) that

"The Director Pipersberg came and reported to me that his salter's canoe had been seized by the Spaniards near the River of Weyne, with eight and one-half hogsheads of salt-water fish."

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It was just at this time that the warning was given by the Warows of Trinidad of the intention of the Spaniards to make an attack upon the post at Moruca, and that, in consequence of which, the Postholder left the post and was "staying up in the bush through fear of the Spaniards, and that he had sent to the post for his belongings."

In 1763 Storm reported (V. C. II, 153):

"The uncertainty of how they would be treated by the Spanish is the reason why I have this year sent no boats belonging either to the Company or to myself out salting to the coast of Orinoque."

This is the sort of Dutch control upon which Great Britain now bases a claim to the territory at Barima Point and the mouth of the Amakuru on the banks of the Orinoco.

In 1765 so little "control" did the Dutch exercise in Barima that Storm reported (V. C. II, 161) that some canoes filled with Spaniards were even in the Pomeroon evidently for hostile purposes.

In 1766 the Rosen affair occurred, which resulted in the order of the Court forbidding Dutch colonists thereafter to stay in Barima. This has already been fully considered. The order of the Court was expressly based on the probability that the acts of the colonists would involve the colony in difficulties with Spain. This is another example of "Dutch control of the Barima."

In 1767 Storm wrote to the Officers of the Militia in Essequibo (V. C. II, 173):

"The Postholder can hardly maintain himself, through Pomeroon, over land."

In 1768 occurred the destruction of the La Riviere plantation. This was described by Storm in his report of June 1 of that year (V. C. II, 176) by the statement that

"our rascally deserters have arrived in Barima with a few Spaniards, and have robbed the Widow La Riviere of all her slaves and property."

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What really happened was this: the seizures were made by "Don Francisco Cierto, Captain of the Company of Pioneers, and consequently of the Coast Guard which protects the ports of this said Province" (V. C. II, 361), by order of Centurion, the Commandant-General of Guayana. The report of Cierto says (*Id.*):

"That the Commandant-General there present having received information that in the Creek called the Creek of Barima, which is close to the great mouth of the River Orinoco and falls into it, sundry Dutch families were established, despatched him with instructions to warn them once, twice and thrice to quit the whole of that territory *because it belonged to the said Province,* in virtue whereof the Declarant went in his vessel, with another accompanying him, in search of the said Creek, and having arrived at the mouth he saw several Indians of the Carib nation, and these, before the Declarant could reach the establishments and farms of the said foreigners, gave them intelligence, and thereupon they took to flight without giving an opportunity for the notification; and they only found the deserted houses and the effects, implements and utensils contained in the inventory, which they put on board the two vessels and then set fire to the said houses, in order that they should not form settlements in future, and destroyed the farms as far as they possibly could."

The concluding "*Auto*" in the series of Spanish records is as follows (V. C. II, 364):

"In this City of Guayana, on the 19th April, 1768, We: Don Manuel Centurion Guerrero de Torres, Captain of the Royal Artillery Corps and Commandant-General of this Province, and Don Andres de Oleaga, sole Royal Officer therein, proprietor having seen these 'Autos' and the result of the four Declarations therein, and whereas the Dutch have unwarrantably sought to take possession of the *Territory of Barima, Jurisdiction of this Province,* where they had established farms and houses to carry on the exportation of woods and other products in a clandestine manner, for which purpose, according to information received, they had likewise gathered together certain runaway slaves, fugitives from the Provinces of Cumaná and Carácas, to act as pilots, and point out the lawless Spanish subjects who only occupy themselves in carrying on clandestine exportation along the creeks and landing-places which are out of the way and unknown; Wherefore, and also seeing that by various laws, and the most recent 'Cedulas' issued by His Majesty, *it is forbidden* under any pretext whatsoever *to suffer or permit foreigners to exercise*

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the freedom of establishing themselves in these dominions by establishing new colonies, considering the importance thereof, and the repeated pragmatic Cedulas which prohibit it, we have had to declare and do declare that the said Dutch by the crime they have committed, and the penalty they have incurred, must forfeit the implements and other things which they were found to possess, and which were brought by the Captain of the Coastguard Vessels."

It would be impossible to find acts of a more formal, official and governmental character than these, nor would it be possible to base such acts more distinctly and expressly upon rights of territorial jurisdiction. No protest was made by Storm in reference to these acts. All that he said was (V. C. II, 176) that it "did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinocque, and for greater security I had this inserted in his pass; he was also forbidden by the Court to settle in Barima."

The fact was that Storm, by his own acts, had deliberately and intentionally tied his own hands in the matter, and he misrepresented it to the Company, also with evident intention, as a mere raid on the part of "our rascally deserters," "with a few Spaniards." How much the deserters had to do with it appears from the Spanish documents.

In accordance with this deliberate intention, Storm thereafter represents all the acts of the Spanish in the Barima as being done by privateers or pirates, occasionally referring to the vessels as "the so-called Coast Guards" (V. C. II, 179).

Possibly this may have been suggested to him by the fact that a seizure was in fact made in 1762 by a Trinidad privateer. The vessel seized was in this case restored by the Spanish Governor—showing the clear distinction between authorized and unauthorized acts in the view of both parties. The vessels from Orinoco that made seizures were coastguard vessels, commissioned for the purpose by the Government; and as to them, while Storm makes many lamentations, he never disputes the right of Spain to use its agents for this purpose in the territory west of Moruca.

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From a report of Centurion, Commandant of Guayana, made in 1770 (B. C. IV, 72), it appears that in 1767 the Commandant had equipped several "cruising *lanchas*" for the purpose of patrolling the Spanish rivers, and he refers in his report to the captures made "in the three years that the privateers for this river have been in service by my orders." The word "privateers" used here in the English translation is incorrect, as the context shows that these vessels were cruising launches, under the command of Spanish officers. The Spanish words are *lanchas corsarias*, which mean "cruising *lanchas*," or "cruisers," as the same word is correctly translated in other places (B. C. IV, 78), where Centurion speaks of "some Dutch captured with their boat by our cruisers [*corsarios*] in the Orinoco and lately brought to this capital."

The patrol maintained by these vessels from this time on was constant. In 1768 Storm reported (V. C. II, 177) that "a Spanish privateer "[evidently one of the *lanchas corsarias*]" from Orinocque cruising along our coast made an attempt to capture your Lordship's salter before the River Wayni;" and he added:

"They are not content with most unreasonably keeping our runaway slaves and with hindering us from carrying on the fishery in Orinocque, which we have always been free to do, but they now wish to prevent us from salting along our own coasts, and will in this manner and by closing our river, and no boats will dare to go out any more. Is this proper behaviour on the part of our neighbors and allies?"

On November 9, 1768 (V. C. II, 179), he wrote:

"According to a report received from the Postholder of Maroco yesterday the Governor of Orinocque is in the mouth of that river with one large and one small boat, both armed, and it is reported that he will stay there for two months, for what reason or object I do not know."

Here was a case at last where Storm could not dispute the official character of the persons exercising dominion in behalf of Spain. Whatever he might say of a Lieutenant of Infantry, a Captain of Pioneers, or the Commander of a Coastguard vessel, in

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characterizing them as "privateers" or "pirates," he could not deny that the Governor of Orinoco in person represented the Royal authority of Spain. He adds, however, that he is there "for what reason or object I do not know." One would think, from the citations already given from his correspondence, that by this time Storm might have known pretty well for what purpose the Governor of Orinoco was staying for two months "in the mouth of that river with one large and one small boat, both armed." Certainly the reader of his correspondence has no difficulty in determining. It only adds another to the graphic illustrations which this correspondence presents of the evasive, shifty and cowardly policy of the Dutch Governors in general and of Storm, the one who was there for the longest time, in particular, in their dealings with this territory, which they never settled, which they even forbade to their colonists for purposes either of settlement or trade, which they never made the slightest attempt or movement to control themselves, and as to which they never made the slightest protest against Spanish control.

How flimsy was Storm's pretense that he did not know what the Governor of Orinoco was about, is shown by a letter written only three weeks later, on November 28, 1768, when the Zeeland Chamber of the Company wrote (V. C. II, 180) to the Director-General:

> "In the meantime the loss to the colony of the fishery in Orinoco causes us no slight regret, but we know no means of redress against this, unless the people in the colony itself should be able to suggest some means of retaliation."

Early in 1769 the Royal Accountant in Guayana gave a list of confiscations and seizures made *in the Orinoco and Barima* by "cruising *lanchas*." These included, among others, an English sloop, an English boat, a French schooner, a French sloop and schooner, a canoe from Essequibo, a felucca from Essequibo, and a considerable quantity of goods from various places (V. C. II, 366).

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In another letter dated March 10, 1769, to the Commandeur in Demerara (V. C. II, 183), the Director-General said:

"I have this moment received a report from Mr. Buisson that the Spaniards are carrying off the Indians from Maroco and have made themselves masters of the post."

What actually happened is described in a letter of the Director-General, on March 15, 1769 (V. C. II, 183), stating that:

"The Spaniards, with two Capuchin Fathers, a detachment of soldiers, and a large party of armed Waykiers, were capturing and taking away as prisoners all the free Indians between Barima and Pomaroon, and that they had actually overpowered the Company's trading place, Marocco, and that they were now there. . . .

"They have captured and taken away all our people that were on the sea-coast. The salter of Luyxbergen has luckily escaped them, but his Indians, his vessels, two large canoes and three single canoes, which he had got by barter, they have taken away. They of Duynenberg returned back early in the morning."

The Postholder reported that they had stated that they had orders from the Governor. He also reported that "the whole of Wacupo and Corey has entirely fled," meaning the Indians about those creeks (V. C. II, 185).

The Dutch Remonstrance of 1769 to the Spanish Government referred to the acts at Moruca, but had nothing to say of Barima.

Not only were the Spanish taking their own fugitive Indians from the neighborhood of Moruca, but they had formed the evident intention to clear the Barima of intruders, and they refused to allow even the recapture of fugitive slaves, which had up to this time been winked at or overlooked both in the interior and in the coast territory.

The Postholder reported in reference to these matters (V. C. II, 168):

"There is a man gone after the runaways of Mr. Volskow; he has luckily caught them, and when here, coming into the Savannah of Marocco, the Spaniards took him, loosed the slaves, and placed the fetters on him and the others with him. But a boy having run away from Miss Persik, came

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and told me this, and also that they will come again to come and fetch the Indians of Pomaroon and the remainder of those who were here.

"The negro J. Breek, his vessel and people, are taken, but he has fled. Mr. Trotz's creole Adrian is taken. They have plundered Joseph Wolff. Jan Domburg they have had twice."

On March 16, 1769, the Director-General wrote to the Company (V. C. II, 187):

"But, my lords, allow me to ask what is now to be done to get food for your lordships' slaves? The salting is now entirely stopped, not alone in the mouth of the Orinocque, where we had carried on the fishery from time immemorial, but there are neither canoes nor corrials to be got for the plantations or the Fort along the whole of the sea-coast, and we are shut in on all sides."

In a letter to the Director-General, May 1, 1769, M. Buisson, Councilor in Essequibo, reported that (V. C. II, 188),

"there was a great panic in Ituribisi, through the Indians' own fear that the Spaniards had come through Pomeroon and seized Jan Baptist and burned his house and were kidnapping the Indians; all those who lived in Ituribisi fled down-stream upon this rumor.

* * * * * * *

"As for the Caribs, they are, it seems, abandoning their land Barima, coming every day up to Essequibo, a great number have gone up, and more are going up to-day, and they will then begin their customary murderous performances above."

In a letter of May, 1769 (V. C. II, 190) to the Company from the Court of Policy and the Director-General, they said:

"The unexpected invasion of the Spaniards, so incompatible with the law of nations and the treaties of alliance, calls for your lordships' most serious consideration, and requires a speedy resolution for redress. Not only is the colony exposed to the greatest danger from Cajoeny up above, and from the sea-coast below, the plantations being continually open to pillage and plunder (amongst which plunderers the principal are your lordships' runaway slaves, to whom all the paths, holes, and corners are known), but our fisheries both in Orinocque and on the sea-coast have been entirely knocked on the head and lost, and your lordship's Post at Maroco has been entirely ruined, all the Indians who still remained having fled, and none now remaining round or near the Post; those in Pomeroon have also departed and abandoned their dwellings, with the excep-

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tion of the Caraibans, who hold their ground, and whom up to the present they have not dared to insult."

In a letter to the Company May 12, 1769 (V. C. II, 190), the Director-General lamented:

"What a pity it would be if such a flourishing colony (such as this is now growing) were to be ruined by rogues and pirates, as must inevitably be the case if no powerful measures are adopted to resist the pirates from Orinocque and made them abandon their expeditions!

"According to the last reports from the Postholder and from the Caraibans, they are still all in Barima, having sent their prisoners to Orinocque, and they threaten to come again at an early date. . . .

"The said Owl . . . told me that the Spaniards in Barima, having been reinforced by another boat, had at last attacked the Caraibans themselves, captured several of the same, carried them off, burnt their houses and ruined their plantations; that they continued to make raids all around and along the sea-coast, and that they were making preparations to come to Powaron, and that they said that when they had finished there they would come to Essequibo and attack the plantations and even the Fort itself.

"I regard the latter as a vain Spanish boast, but they are quite capable of doing all the rest. Things have now actually reached such a stage that we can return violence with violence, but is it not a sad thing, my lords, that we have such a weak garrison and not six men among them upon whom we can place the least reliance?"

He added:

"The depredations of the Spaniards from Barima to Powaron continuing daily, we must acknowledge that they are capable of anything, and that we must expect all kinds of violent and piratical acts from them."

Such was Storm's characterization of the acts of the Spanish Government in exercising jurisdiction and control over the territory which it claimed as its own, and whose claim nobody disputed. In view of the presence of the Governor himself for two months in the lower Orinoco, at its mouth, Storm might on this occasion have omitted his usual epithet of "rogues and pirates."

The reports of Spanish acts of dominion in Barima continue. On July 31, 1769, the Director-General informed the Company (V. C. II, 197):

"Three excellent slaves of John Liot, carpenters, have run away to Orinoco; he has been in pursuit, but was compelled to return, the Span-

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iards (so he says) having followed to beyond Pomeroon. The man whom Vulskow had sent in pursuit of his slaves, and who, as I had the honor to inform you in my preceding letter, had been seized and put in chains by the Spaniards, has come back.

He told me that he had been treated very badly as soon as he arrived in Orinoco; that the Governor had sold the slaves."

It is a most significant fact that while the Dutch in their Second Remonstrance complain of the prohibition of the fishery, which they allege had been theirs from time immemorial, of the capture of a fishing vessel off the mouth of the Waini, of the attack on Moruca, and of the failure to seize and return fugitive slaves arriving at the Orinoco settlements, they say nothing of Spanish acts of dominion in Barima.

The remonstrance of the Dutch Government was of no avail. On the 30th of November, 1769, Storm reported (V. C. II, 213), that

"The Spaniards continue to cruise along the coast, so that there is no chance of getting anything salted for the plantations, which does both the Honorable Company and the planters a great deal of harm."

In letter of November 30, 1769 (V. C. II, 213), to the Company, the Director-General said:

"The actions of that proud nation are really unbearable, and the more so because they presuppose a considerable measure of contempt, since the Spaniards in Orinocque must be fully convinced that if we chose to use our power with our Indians we could make the whole of Orinocque too hot for them."

He added:

"Meanwhile our fisheries are ruined, and we have lost all our runaway slaves. The slaves cannot live and work without rations, and three pounds of fish once a fortnight is really not much. This has now to be bought from the English. On the 18th I had to buy six barrels of cod; and if the English were not to come here, the colony would be unfortunate indeed; this is very costly, too, both for the Company and the planters."

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In a letter of December 3, 1769 (V. C. II, 214), the Councilor in Essequibo reported to the Director-General:

"I can not neglect to communicate to Your Excellency that Pedro Sanchos has come from Orinoco with the bad news that in a month or six weeks 2 boats will come with as many as 50 or 60 men to kidnap the Indians as far as in Pomeroon, and then, I fear, plantations will surely be pillaged; for this Governor sets his boundaries as far as at the bank of Oene."

On December 21, 1769, the Director-General, in a letter to the Company (V. C. II, 214), said:

"I take this opportunity of informing your lordships that Pedro Sanchez having been in chains in Orinocque for some months, had the good fortune to escape. He has informed me that two privateers are again fitted out, with a much stronger crew than the former one, and that in about five or six weeks from now they would come to Maroco and, further, into Pomeroon to carry off all the Indians whom they could get, and that they would probably come as far as the mouth of this river."

In a letter to the Company, July 30, 1770 (V. C. II, 216), the Director-General reported:

"The fishery in Orinocque still being closed, I am compelled to buy cod for the plantations and for the rations of the slaves."

August 18, 1770, the Director-General reported to the Company (V. C. II, 216):

"Young Mr. Tulleken, having asked for a permit to go to Maroco, and having obtained the same, I now hear that he went farther, and that he was arrested and is now a prisoner in Orinocque."

In a letter to the Company, January 6, 1772 (V. C. II, 218), the Director-General, complaining of the refusal of the Governor of Orinoco to make restitution of runaway slaves who escape into his territory, said:

"The former Postholders in Maroco were able to do something to arrest the progress of this evil, they having at least six or seven hundred Indians around that Post, some of whom they could always have out at sea, but the unauthorized attacks of the Spaniards have driven these natives away, and the Spaniards even came to the Post, as your lordships know, sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so."

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This does not speak well for Dutch control of the Indians. If such was Dutch control and protection of the Indians at a Dutch "post" in Moruca, what must it have been in the territory stretching out from 100 to 200 miles to the westward?

So in the next letter to the Company, September 30, 1774 (V. C. II, 222), the Director-General reported:

"We have been continually annoyed by the Spaniards, who, to the number of forty, recently came down as far as the Post of Maroco, carrying off with violence or killing all the free Indians in those parts, by which these people who are of such advantage to our colony are at once driven out of our land, they fleeing in whole troops to the river Corentyn."

On October 11, 1775, the Postholder in Moruca wrote to the Director-General (V. C. II, 228);

"This serves to inform your Honour that on the 8th of this month the Spanish Captain Mattheo, having with him fifty men . . . [have been here], and taken away all the Indians and boats, going as far as a distance of more than two hours below the Post; they have even carried off the Indians who have come hither to lay out plantations." . . .

"So that there is no longer an Indian to be found in these parts. The Spanish Captain said that they had come to look for the Indians who had killed the Spaniards, and that they had come in two large vessels lying at Biejarra [Biara] at the mouth of the Hittaba, [Itabo] and that he, the Captain, had been sent out from those vessels, and he further said that his lord and master would shortly set a guard in the arm of the Weene called the Barmani, and that the whole of Maroekka belonged to the Spaniards."

"The Spanish Captain Mattheo," referred to for the first time in the letter last cited, was Don Mateo Beltran, for more than ten years Captain in the Royal coast guard on duty in the Barima and Orinoco. He is frequently referred to in later letters of the Director-General, who apparently thought that he was a species of "pirate"; in other places he is called a "privateer," and on one occasion the Commandeur of Essequibo expressed doubt as to whether he had a commission (V. C. II, 236).

Beltran, however, was neither a pirate nor a privateer. In a

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journal of one of his cruises (V. C. II, 442), he shows exactly what his relation was to the Spanish authorities, and also gives a description of the cruise which may be taken as typical of his regular occupation of patrolling the Barima, Waini, Amakura, and lower Orinoco. The importance of this document as indicating Beltran's authority and the nature of the control exercised through him was recognized by Her Majesty's Government, in that it was one of the few documents for the original of which they made a call, under the provisions of the Treaty.

The journal opens by the statement (June 23, 1785):

"Having left this capital [Angostura] by order of the Governor and Commander-General Don Miguel Marmion, steering in a straight course to the great mouth of the Orinoco, from thence passing into the Barima creek, on the same day, at ten o'clock at night, we arrived at the Port of San Miguel."

On the following day Beltran arrived at the Presidio, and prepared the cartridges for the cannon and put the arms in order. Thence he set out, having received an Indian, in addition to his force, from the Commandant, Don Antonio de Perella.

Arriving at the Portuguese Islands, Don Mateo learned of a schooner fishing in the mouth of the Waini, and proceeded on his cruise, meeting occasionally with Indians from the missions, some of whom he took on board of his vessel.

One of the parties to which he refers was an expedition composed of four canoes of mission Indians, under the command of the gunner of the Coast Guard, who was also patrolling "by order of the Commander."

After passing the patrol boats of the gunner, he continued down the river, visiting the lowest island in the Orinoco, Cancrejo, directly opposite the mouth of the Barima, where he passed the night.

At Amakuru he sent for three Indian chiefs, two of whom lived between Amakuru and Barima, and gave them some orders.

On the 29th of June, having been out just a week, Beltran an-

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chored in the Barima, and sent out the coxswain in a canoe with eight scouts to patrol the river. The coxswain and his patrol were gone all day, and upon their retnrn reported that they had found three canoes "concealed in the bushes, where some Guaruano Indians had a hut inland."

Beltran thereupon ascended some sixty or more miles up the river, passed through the Mora Passage to the mouth of the Waini, but found nothing but the places where the Dutch had been fishing and salting and gathering thatch, but the vessel was gone.

Informing himself wherever he went from the Indian chiefs, as to the condition of affairs in Barima, he heard that some Hollanders had some days previously come down with a few *poitos* to the headwaters of the Barima, and that they had taken them to Essequibo.

Returning down the Barima, Beltran went to the mouth of the Aratura, in the lower Orinoco, and stretched across the *Boca de Navios* to the islands, passing the night at Loran, the large island next but one to Cancrejo.

On the 8th of July, in the evening, he arrived at the Presidio, where he awaited letters from the Commandant; whence, on the 13th, he returned to the capital, having been gone altogether for three weeks.

The above narrative by Beltran of a three-weeks' cruise, may fairly be taken as an example of all his numerous expeditions. It does away entirely with the suggestion that he was not the authorized agent of the Spanish Government. He was as much an officer of that Government as Cierto, or Flores, or the Commandant himself. He starts under the orders of Marmion, the Governor; he has his cannon put in order at the fort at Presidio and fills up his detachment from the force under the Commandant, and he returns at the end of his cruise to the Presidio, where he awaits orders from the Commander-in-Chief. In the meantime he patrols the whole course of the Orinoco River to its mouth, including the large islands in the neighborhood of Barima Point;

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issues orders to the chiefs living on the Amakuru; patrols the Barima for sixty miles from its mouth; visits the Waini for the purpose of apprehending vessels engaged in the fishery, contrary to the prohibitions of the Spanish Government, and finding nothing which calls for immediate attention, he returns.

This was Beltran's occupation during the whole ten years, from 1775 to 1785, at the beginning of which period, in 1775, he is first referred to as "Captain Mattheo" by the Director-General of Essequibo, although the Director-General seems to attach more importance to the rumored presence with the Spanish force of some stray deserter from his own garrison than he does to that the Spanish Captain.

The journal of Beltran also shows what was the nature of the Spanish patrol prior to 1775, when Flores and Cierto were in command of the coast-guard vessels (*lanchas corsarias*), whose movements were precisely similar to those described in the Diary, and included the control of the rivers and the seizure of vessels and of persons not only in the interior of Barima, but in the mouth of the Orinoco and Waini. It explains the meaning of all those reports of Storm, which month after month describe the presence of the Spanish launches in Barima and Waini, and even in the Moruca itself.

In 1779 Don José Felipe de Inciarte was ordered to make an exploration of all the land to the east of the lower Orinoco, included under the general name of Barima (V. C. II, 434), and was engaged in carrying it out during the greater part of the summer and autumn of that year. He traversed and surveyed in detail the Barima, the Aruka, the Mora Passage, the Waini, the Barama, the Baramani with the various creeks at its head, the Biara and the Assacatta, including the itabo running through the savanna, and finally the Moruca, and advised the establishing of a fort in the immediate neighborhood of the Moruca post (V. C. II, 434–8).

Inciarte's report was made direct to the King, and in conse-

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quence of it a royal order was issued to him, charging him with the "mission of occupying and populating the lands described in his report," and of erecting two forts on the Moruca.

The order, however, owing to various delays, had not yet been carried out when the Revolution broke out in Venezuela.

In the meantime Beltran continued to be employed on the duties which had been assigned to him in patrolling the Barima, and from time to time the reports of the Director-General show his activity.

On September 23, 1779, the Director-General reported to the Company (V. C. II, 236):

"Having thus replied to your greatly esteemed resolutions on my behalf, I take the liberty to inform you that three weeks ago a party of about 80 Spaniards and half-breeds were for some days in the river Pomeroon, without, however, doing any damage; but the Indians report them as having said that they were coming back in three months and would then establish a fort there."

In the journal of J. C. Severyn, Military Commandant in Essequibo, under date of March 1, 1781 (V. C. II, 236), he said:

"Several reports which came in yesterday and to-day state that the Spanish privateer has already seized some negroes of English planters in this colony who were on the river in boats, and holds them prisoners in his vessel; while he has hailed many others and made them heave to, but, on learning that they belonged to Dutch planters, he allowed them to depart unmolested, he having gone so far as to threaten with musket in hand that he would fire upon them if they were unwilling to come to. This Spaniard's name is Mateo, and it is a matter of speculation whether he has a commission."

April 3 the Journal stated (V. C. II, 237):

"The assistant Luyken, who had set out with a flag of truce and letters for the Governor of Orinoco, returns and says that in the river he had met a boat with Indians, who had told him that Mateo was lying with his craft in the river of Barima, and was carrying off everything without distinction."

May 22 the Journal stated (App. Ven. II, 237):

"The planter Cramer reports to Captain Ingram that in the river Pomeroon Spaniards with boats have again been seen."

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In 1785 Don Matheo Beltran's cruises again were made the subject of comment by the Dutch authorities. On October 14 of that year, the Government Journal contained an entry that one of the colonists had heard from Indians that "Matheo, who is a Spaniard on the coast, mentions and threatens that he will overtake and burn our Post at Marrocco" (B. C. V, 40). On October 2 it was reported "that a Spanish barque managed by one Matheo continually cruised by or about the Post, which skipper had expressed himself more than once in a seditious way, threatening to set fire to the Post." In consequence of which, the Commandeur, after deliberating for three weeks, on October 29, gave the Postholder the bold and resolute order "that, if the said Spanish Captain named Mattheo again expressed himself in such seditious terms, he was to make directly a report thereof" (B. C. V, 42).

The Commissioners in their report to the Prince of Orange on the condition of the Colony of Essequibo and Demerara, July 27, 1790, stated (V. C. II, 243):

"Many more lands here could be brought under cultivation if the vicinity of the River Orinoco did not prevent it, for the *Syaniards there sometimes come with armed boats, called lances* [*lanchas*], *as far as Moruca, and by force carry the Indians who dwell there*, enslaving them, while on the other hand our negro slaves, when they run away, betake themselves to Orinoco, where they are proclaimed free."

In 1802 Major McCreagh, of the British Army, made an official reconnaissance of the posts on the Orinoco. He stated (V. C. III, 57):

"In entering the River Orinoco by the southeast, generally called the great channel, Cape Barima forms the southeast point."

And he described "an immense assemblage of flat islands, intersected by innumerable channels," which forms what may be called the north wide side of the great channel. These are the islands of Cancrejo, Loran, and others opposite Barima Point, forming with it the two banks of the Boca de Navios.

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He went on thus:

"Having entered the river, you pass close to leeward of this island, and a few miles farther up you come to a second, of nearly the same appearance, on the lower point of which are three temporary huts. It is called the first military post, but is in reality a station for pilots—of whom there are always five, who are regularly relieved. They are native Indians, and are occasionally called either pilots or soldiers. The former, I believe, however, is the only of the two capacities in which they are used to act. This island is called Pagayos."

In 1802, therefore, the first post of the Spanish on the Orinoco was the pilot station at the Island of Pagayos. This island, though put down on Sheet 1 of the British Atlas, is not named on that map. It is at the mouth of the Arature River, the first branch of the Orinoco above the Amakuru. Many other maps in the British Atlas show the island by name; for example, Map 46 (Schomburgk), where it is marked, "I. Pagagos or Pilot I."

Major McCreagh went on to state:

"The second post, as it is termed, is named Sacopana, and is situated on this side of the river about 120 miles above Pagayos."

It consisted of eight houses, and was under the command of a sergeant.

The third post was at Fort Barancas, seventy miles further. It contained a battery of eleven guns, commanded by a lieutenant, with a garrison of three Spaniards and forty-six Indians.

The fourth post was three miles higher up the river, called Upper Barancas. Here were stationed three gunboats, close to the beach, each mounting one heavy gun and some swivels. At this post it was the rule to stop all vessels.

The fifth post was thirty-eight miles further, at the town of Old Guayana. It comprised a battery of six 6-pounders and six smaller guns. The garrison consisted of six officers and twenty-five rank-and-file.

Above these five posts, eighty-two miles further up, was the town of Angostura, the capital. According to McCreagh, it was a well-built town:

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"The houses all of stone, the roofs tiled, the streets laid out at right angles, and the whole situated on the sloping side of a hill."

There were about fifty soldiers at the town. McCreagh's comment on its situation, which he was of course regarding chiefly from a military standpoint, in consequence of which the feature which most impressed him was the weakness of the defences, was

"Except the conversion of the aboriginal natives (which is certainly not the primary motive), the Spanish Government has obviously no other object in occupying the Oronoque than the very important one of excluding other powers from a river which runs along the rear of the Provinces of Popayan, Venezuela, Carraccas, Cumana and Paria; which, therefore, in the hands of a commercial nation would carry away from them the productions, and monopolize the traffic of those rich territories, and which, if possessed by a warlike power, might immediately paralyze the authority and gradually destroy the tenure by which Spain holds her vast Empire in South America."

Major McCreagh's statement is full of interest. Undoubtedly the defences of Spain in the lower Orinoco were not highly efficient from the standpoint of a great military Power, and such a Power desiring to take the hint conveyed by Major McCreagh's official report and to carry on a war of conquest would have found little difficulty in overcoming them. The evidence of McCreagh may have been valuable at the moment to indicate the military inferiority of the Spanish defences; it is invaluable now as indicating the completeness of the Spanish occupation of the lower Orinoco. At the time it was written it contemplated the divesting of Spanish title by war; now it appears as an inconvenient admission on the part of a British officer to prevent the divesting of that title without war.

If, as the British Case seems to believe, occupation is necessary to establish Spanish or Venezuelan title, nothing could have been more complete for the purpose than the occupation as McCreagh describes it in the lower Orinoco. That occupation began in the 16th Century. As admitted in the British Counter-Case (page 28,

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line 30): "The Spaniards entered, explored, settled, and effectively defended the Orinoco." The occupation has been continuous down to the present day, and as early as 1802 it was so complete that, at intervals down the river below the capital to within a few miles of its mouth five posts existed, four of which were military posts, with batteries, in command of an officer, and the fifth was a post of pilots a few miles from the mouth of the river. If occupation of a river is required to establish a title to it, what more occupation can be needed than this, an occupation lasting for over three hundred years? And in the face of such a title, accompanied continuous occupation, what title can possibly be set up by Great Britain to one of the banks of the Orinoco, either up to the Barima or the Amacura? How has this Spanish title been divested, and how has a British title been acquired?

The Spaniards uniformly asserted their rights in Barima. They never made the slightest admission, and they evidently never had the slightest idea that all the territory west of Moruka was otherwise than Spanish territory. They uniformly conducted themselves as if it was Spanish territory. It was visited constantly by Spanish officers, in the performance of their public duties, and the public duty with which they were charged at the time was the duty of prohibiting intrusion from foreigners, of preventing the slave trade, and of enforcing regulations in respect to commerce and fishery. Every one of these was an act of territorial jurisdiction. Look at the orders to Flores, and Cierto, and Inciarte: All of them were expressly based on the Spanish title to the whole region. Look at Beltran's declaration to the Postholder at Moruca, and the statement of the Spanish Governor, twice reported to the Director-General of Essequibo and by him reported to the Company, that the Spanish boundary was at the bank of Oene. The Spanish authorities never hesitated for a moment to enforce territorial jurisdiction them against foreigners as well as Spaniards; in fact, the cases which we have in the records, which are innumerable, are almost

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entirely cases of enforcing dominion against the Dutch of Essequibo, their persons and their property.

Notwithstanding all that the Spanish did, no remonstrance was ever really made against the exercise of dominion in Barima as such. There were protests made about the fishery, which the Dutch claimed by use, which claim the Spaniards disputed. There were protests about depredations at Moruca, which the Dutch claimed was the site of their post and was an injury on their territorial frontier. But so far from resenting the acts of which they had the clearest knowledge, and of which the evidence to-day is largely to be found in their own records, they not only did not resent them, but the Colonial authorities were expressly instructed by the Dutch Company to avoid retaliation, and to give the Spaniards no cause of offence.

From the records that have been quoted above, Barima appears, during the latter part of Storm's administration and of that of his successors, to have been as much Spanish territory as any part of the country west of the Orinoco—not settled, it is true, but none the less Spanish, for settlement was not then necessary to establish title any more than it is to day. A settlement was, however, decided on, and its establishment was commanded in a Royal order, and doubtless would have come about in time, had not the Revolution interrupted the plans of the Spanish Crown.

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CHAPTER XIV.

ADVERSE HOLDING—TRADE RELATIONS.

An important part in the attempt to establish a political control by the Dutch over the territory in dispute is given in the British Case to Dutch trade. The proposition is thus stated, at page 80:

"The earliest political control exercised over the territory in dispute was connected with trade.

"By the Treaty of Munster the Dutch and the Spaniards, while retaining the 'commerce and country' which they then respectively held and possessed, were debarred from trading in the territories held by each other. Even before the Treaty of Munster it had been a maxim of Spanish policy to exclude foreign trade from Spanish possessions, the truce of 1609 having contained a similar provision. In 1612, for example, this rule was enforced upon the Governor and people of Santo Thomé.

"It is, of course, the fact that the Dutch carried on an extensive contraband trade with the Spanish possessions by the connivance of the authorities, but the existence in any region of trade carried on by the Dutch systematically and not on sufferance excludes the idea of Spanish political control, while it naturally, and in fact, led to political control by the Dutch. It is from this point of view that it is important to see over what region the Dutch traded systematically and as of right."

And on page 155 of the British Case the following important statement is made, in addition:

"Where, as was usually the case with the early European Colonies, the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area surrounding its settlements, that area was undoubtedly effectively controlled, and its resources in their then state of development were effectively appropriated by that Government."

The subject is dealt with in the Counter-Case of Venezuela at page 73.

It would seem that, after putting forward the claim that is made in the extracts above cited from the British Case, it should

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have given some information as to the foundation upon which the supposed claim of the Dutch to an exclusive trade in the disputed territory was based. Take, for example, the period immediately after the signing of the Treaty of Munster. Did the Dutch then have an exclusive right to trade within the disputed territory? It does not seem to be claimed that they had; but, if so, the claim can only be based upon the proposition that the bounds prescribed by the Treaty of Munster included this region, and that it was a Dutch possession. Such a claim is inconsistent with the explicit declaration of the British Case (p. 13) that

> "After the conclusion of the Treaty of Munster, great extensions of their possessions in Guiana were made by the Dutch;"

and the context shows that the extensions referred to included not only Pomeroon, but also the whole disputed territory which has been referred to as the Region of the Interior and the Region of the Coast.

As to these "extended possessions," it cannot be claimed that the Dutch had any exclusive right of trade there until their title was extended; so that it would seem to be implied that any exclusive Dutch right to trade within the disputed territory must have had an origin later than the Treaty of Munster. Such a right can only be based upon one of two grounds: either that there was territory intervening between the Dutch limits and the Spanish limits which was *terra nullius* and subject to be taken up and occupied by any nation, or that it was Spanish territory to which the Dutch might acquire a title under Art. 5 of that Treaty, or if not in that way by prescription after the Treaty. If the territory was *terra nullius*, it was open to Spain as well as to the Dutch for trade, and so the alleged exclusive right must have accrued from a competent subsequent acquisition of the territory by the Dutch. The latter could not have an exclusive right to trade within it until the Dutch dominion therein became exclusive. We think we are entitled to a little more definite statement from our adversaries.

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The subject of trade relations is presented in the British Case as one element of title by political control; as a thing not necessarily involving political control, but which led to it. In order that it should have any effect, it seems to be conceded that the trade must have been carried on as of right, and not under any tacit waiver or under any trade convention or concession, or by the connivance of the nation making claim to the territory. According to the theory advanced, the Dutch claim must have been one that, under the trade rules of that day, involved the exclusion not only of the Spaniards, but of the French and of the English, and one that operated not only upon foreign nations, but upon the natives, a right to prevent the Indians from trading with the Spanish, French or English and to punish them if they did.

It seems that, logically, the title to dominion over the territory must be established first and without reference to trade, because no nation can claim an exclusive right to the trade of a region over which it has not acquired sovereignty, except by treaty with the Sovereign. Sovereignty gives a right to the control of trade. Trade cannot of itself lead or give a right to sovereignty. Any pretension to control the trade of a country over which sovereignty has not already been acquired is frivolous. We suppose, however, that it is intended that the assertion and exercise of such a right is given as evidence that the sovereignty had been acquired. If the claim were made without title from any other source, it would not be allowed by any other nation as of right.

The elements that are essential, according to the admission of the British Case in the above citations, to give to trade the effect that is claimed for it are that it should be a "systematic" trade; that it should be "an exclusive right of trading within a specific area surrounding its settlements"; that it should be exercised under a "claim to dispose of an exclusive right"; and that the claim should be enforced. The basis here is not different from that of a prescriptive title based upon occupation. The occupation must

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be exclusive; it must be of a specific area; it must be under a claim of right to a specific area, and the occupation must be actual; or, in other words, the claim must be effectively maintained.

These definitions, laid down in precise and accurate terms by the British Case, prescribe the test by which the effect of trade relations is to be weighed as evidence of the acquisition of public title or sovereignty to the disputed territory.

We assert that, upon the evidence, the Dutch trade within the disputed territory fails in every one of these particulars.

Before applying to the evidence in this case the tests laid down by the British Case to determine the value of trade relations as evidence of sovereignty, a word must be said about the character of Dutch trade in the disputed territory. This trade was of several kinds, and they must be carefully distinguished.

First, there was the trade which the Dutch carried on with the Spaniards in the Orinoco, where the Dutch, coming either with money or with trading wares, either across the interior territory or across the coast territory or by sea, bought from, sold to or bartered with the Spaniards in the settlements of the latter.

Secondly, there was the trade carried on by the Spaniards with the Dutch in the river Essequibo, which was simply the reverse of the previous process, and which in the latter part of the period gradually replaced it.

Thirdly, there was the trade between the Spanish and the Dutch where the traffic or barter took place in the disputed territory, either directly or through the intermediary of Indians.

Finally, there was the Dutch trade with the Indians themselves, which must itself be considered in two aspects: First, where it was carried on by the Dutch itinerant traders wandering through the disputed territory; and, secondly, where it was carried on by Indians who brought their wares to the Essequibo River itself.

Great confusion has been caused in the presentation of the

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British Case by the entire failure to distinguish between these different classes of Dutch trade.

Of course, nothing can be predicated on Dutch trade as a basis of sovereignty where the Spaniards were the other parties to the traffic. The Dutch could acquire no rights as against Spain, either territorial or of any other kind, by a trade in which Spain took part equally with them. No distinction, however, is apparently drawn by the British Case between these different classes of trade; and the movements of a Dutchman in the territory in question, even though he is only crossing it for the purpose of dealing with his Spanish neighbors, are dwelt upon as being all of equal importance, while the movements of Spaniards in the disputed territory, whether trading with the Indians or with the settlements of Essequibo, are alike ignored.

The only question presented here is as to the effect of Dutch trade with the natives in the disputed territory.

I. Was the Trade Systematic?

The Dutch trade fails to fulfill this requirement. It was not systematic in the sense of having definite trade locations or in any other sense. It was fugitive; conducted on the streams by the passing of wares from one canoe to another, or on the banks, or in the paths of the forest, under the shade of trees, or under temporary shelters where shade was not convenient or the exigencies of trade involved some delays.

The trade was carried on either by old negro slaves of the Company or by the "itinerant traders" or "rovers" who roamed through the forest and bought or bartered in defiance of the Company's regulations. There is no locality that can be pointed to as an established centre of trade west of the falls of Cuyuni and west of the post of Moruca. There was no agent anywhere established by the Dutch, either of the Colonial authorities or of private traders, to carry on such trade except in the short-lived post in Cuyuni, which the Spanish speedily brought to an end,

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and the "shelter" which Beekman intended for use in the Barima in 1683, but which, if used at all, was used only for a few months, as the undertaking was shortly ended by the Company's refusal to take up Beekman's project and by the cutting off of Essequibo from direct communication with the coast territory by the second colony of Pomeroon planters.

As showing the maintenance of a systematic trade during a period of a century and a half these so-called evidences point rather to the exclusion of the Dutch from a systematic trade than to their maintenance of such a trade. Even if there had been an agent and an agency in the locality, the existence of such an agency merely for trading purposes would not have been evidence of dominion. But where the only attempt that was made to establish such an agency in the disputed territory was frustrated by the capture and imprisonment of the agent, or by his withdrawal under threats of attack in one case, and the abandonment of the project in the other, these facts prove affirmatively the absence of dominion.

That there was a large and important trade with the Spaniards and to regions admittedly Spanish is unquestionable. The trade with the Indians, however, was small in its money value and in its ministry to the colony. The Indians were not producers, but warriors. The Caribs who largely frequented the Barima and Cuyuni regions were in particular a predatory tribe. "Red slaves" were their principal offerings. Food stores were chiefly for their own use, and produced by the labor of the squaws. In the very early period, the Dutch no doubt obtained from the Indians considerable cassava, the dried root which both Spaniards and Dutch used as a substitute for bread. It was not long, however, before the colony had its own cassava or bread plantations within its own limits; certainly before the close of the 17th century. So with the supplies of wild hog and fish, with which the earliest colonists were more or less supplied by the Indians. These supplies were later replaced by the

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hunting of the wild hog in the neighborhood of the colony, by the colonists themselves and by the shore fisheries which the Dutch conducted along the coast on both sides of the mouth of the Essequibo. The articles obtained from the Indians were "red slaves," dyes, poison-wood, canoes, fresh and salt fish, balsam, letter-wood and hammocks.

An examination of the entries in the Commandeur's Journal (B. C-C., pp. 47-158) shows the petty character of the trade and the manner in which it was conducted. The first entry shows that the products of the plantations had become large. One hundred and nineteen hogsheads of sugar had been shipped from a single plantation.

The items as to the Indian trade run thus: "Some fish"; "some fresh fish"; "fourteen or fifteen bundles of poison-wood"; "some oriane dye"; "two parcels of bread"; "four female slaves, two children and a boy." And then we have a negro trader returned from the upper Essequibo with "129 pieces of salt fish, 12 calabashes of balsam, 20 logs of letter-wood, and four balls of fine dye." How long it had taken him to collect this cargo we do not know. Another trader comes from the upper Essequibo with "140 pieces of salt fish, making together about two casks full." But the yacht "Rammekens" had to go to the coast "to obtain provisions" for the garrison and slaves.

And so the story goes. The trade with these South American Indians was on a very different footing from that with the North American Indians. The former had nothing to barter that was not the product of manual labor—and the warrior scorned such labor; while the latter, by the chase, accumulated pelts of great value, and so opened the way for a trade that was vast and profitable.

These Journal extracts not only show that the trade was small, but that it was largely conducted by single negroes going out in canoes to find the Indians and to pick up here and there through

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the forest the balls of dye or pieces of cassava root, or fish or hammocks that they brought back.

II. Was the Trade Exclusive?

The use of this territory for purposes of trade was not exclusive. It is manifest from the description which has been given above, without any evidence to that effect, that the trade could not have been exclusive. No measures were taken by the Dutch to exclude anybody. The journeys to and fro of the three or four negro traders, some of whom were occupied in the upper Essequibo, and none of whom had any fixed routes or times for trading, could not have excluded anybody else who desired to enter the territory. Neither could the few itinerant traders or rovers who went in there on their own account. There was not a settlement of Dutchmen west of Cuyuni, in the interior, or west of Moruca, on the coast. There was not, during the whole period of a century and a half a political or military agent of the Dutch in that territory to enforce any exclusion, either with or without the necessary men to carry out such an object. As far as any measures taken by the Dutch were concerned, the region was as open to anybody else as it was to Dutchmen. Moreover, as far as its geographical character was concerned, the region was more open on the west than upon the east. In the interior, the east side, adjoining the Dutch settlement, was a forest wilderness, traversed only by a river whose rocks and cataracts and rapids made its passage dangerous even to the Indians. The west side, adjoining the Orinoco, was an open territory, largely consisting of savannas, watered by great streams, whose accessibility was clearly shown by the advance in the course of the eighteenth century from the Orinoco as a base of more than a score of prosperous settlements and villages. The coast territory could only be reached from the east by sea, going around Cape Nassau and ascending the Pomeroon or Moruca, whence the passage by the itabo through the savan-

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nas was frequently interrupted, nearly always in fact during the dry season. On the western side, the entrance, without ever leaving the Orinoco, was made by the mouth of a great and deep river, the Barima, free from rocks or falls or obstructions to navigation of any kind,—a river which gave access to the whole territory at all seasons as far as the itabo itself.

In view of the geographical characteristics of this territory as to accessibility on its eastern and western frontiers, it might be expected, and it was the fact, that the Spaniards did more trade in it than the Dutch. In the interior district south of the Imataka Mountains the Spaniards not only traded in it, but settled in it. The efforts of their Capuchin missionaries, sent out by Royal authority, which were begun in 1686, at converting and Christianizing the Indians paved the way for the establishment of mission settlements, which, beginning in 1724, continued throughout the whole century, the last one being Tumeremo, which the Crown established in 1784.

During this whole period the Spanish settlements were constantly increasing in numbers and importance, notwithstanding the fact that in the middle of the century some of them suffered from the attacks of hostile Indians. In 1813 they numbered twenty-nine settlements, with over twenty-one thousand inhabitants, chiefly Indians. (V. C. II, 487.)

In addition to the settlements directly in charge of the missionaries, other settlements existed in the same territory, such as Upata, with its great tobacco plantations, and the *Hato* or cattle farm with two hundred thousand head of cattle, and the fort on the south side of the Cuyuni at the mouth of the Curumo. Nearly all these settlements and establishments were in the territory washed by the Cuyuni and its tributaries. How great a stimulus they must have proved to inland trade it is not necessary to dwell upon.

Long before the missions were established, however, the Spanish were trading in this district. In 1684 Beekman wrote (V.

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C. II, 46) that "the copaiba and curcai are much bought up by the Spaniards." The horse trade was entirely in their hands. In 1693 the Company wrote to the Commandeur (V. C. II, 64):

"No slight advantage, moreover, has been brought to the Company through you by your having found out, up in the river of Cuyuni a trade in horses."

In the official Journal of Fort Kykoveral, August 17, 1699 (B. C. I, 215), it is said:

"This morning a goodly parcel of trading wares was given to the old negro traders so that they might set out for the Upper Cuyuni to-morrow to procure some horses by barter."

In 1701 Beekman reported (V. C. II, 65):

"The trade in horses up in Cuyuni does not go as briskly as it used to."

And in the same year he reported (V. C. II, 68) that horses were bought from a Rhode Island ship, "because all the lands where we carry on our horse trade are under the King of Spain."

In 1702 he again said (V. C. II, 69):

"The Spaniards will no longer permit any trafficking for horses on their territory."

And in 1703 (*Id.*):

"No horses are to be had above here as formerly, inasmuch as those Indians think they stand under the Crowns of Spain and France, and this trade is thereby crippled."

In 1706 (V. C. II, 71) he referred to the report "that the Company's horses purchased up country in Cayuni should always die."

When the British Case (p. 155) refers to a state of things where "the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area," it intended to refer to the Dutch Colony of Essequibo; but it would appear from the instances above quoted that "the colonizing Government," which "enforced a claim to dispose of an exclusive right of trading," was not the Dutch, but the Spanish Government.

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Not only did the Dutch fail to enforce an exclusive right, but, on the contrary, the Spaniards did enforce an exclusive right, and the Dutch assented to it, respected the prohibition, admitted the right and admitted the territorial claim upon which it rested, and that, too, in the Cuyuni valley as early as the very beginning of the eighteenth century.

The trade of the Spaniards in and through this territory not only existed in the seventeenth century period, but continued from that time on. Not only did they extend their settlements in the territory watered by the tributaries of the Cuyuni, the Yuruari, the Uruan and the Curumo; not only did their traders penetrate the interior district, through which the Cuyuni passed after receiving the waters of these tributaries, but the Spaniards themselves came down the Cuyuni in considerable numbers to the very settlements of Essequibo. The clearest proof of this is given in a document embodying the report of a Committee of the Essequibo Court, dated July 27, 1750 (B. C. II, 68). At this date the center of settlement of Essequibo had been gradually moving down the river. In 1740, it will be remembered, the fort, the Governor's house and the principal offices and storehouses were moved from Kykoveral to Flag Island. It, therefore, became a subject of complaint to the Company and to the planters in the lower Essequibo that the Spaniards who came by way of the interior district stopped at the upper plantations, namely, those about the mouths of the Cuyuni and Massaruni, and did all their trading there, to the prejudice of the Company and of the planters lower down. The Committee said:

"That, furthermore, they, the members of the Committee, were of opinion that the Company's shop there should again be started . . . in view of the *increasing Spanish trade*, it was not unlikely that a reasonable profit might be made of it, especially so if it could be brought about that the Spaniards no longer, as heretofore has usually happened, tarried with their articles of trade among the private settlers living up the river, but came with them farther down and as far as to the fort. To attain this end, a resolution might be passed that no one whatsoever

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should be allowed to come into the river, much less make a stay there, unless he beforehand addressed himself to the Commandeur there, and asked him for permission to stay in the Colony for a stipulated period."

This statement lets a flood of light upon the trade conditions of the interior district at the middle of the eighteenth century. It appears that at that time the Spanish traders not only overran this district, but even came down the Cuyuni to the Essequibo settlement itself with their merchandise; and as they reached first the upper plantations near the Cuyuni mouth, they did all their trading there. Nor is the reference here to an isolated act like so many of those upon which reliance is placed by the British Case. It is a practice well developed and evidently long continued, a practice so firmly established that it required the consideration of an official Committee to determine what steps should be taken to obviate it, a proceeding almost unheard of in the history of the colony.

In view of the above facts, attention is called to the remarkable statement in the deposition of June 14, 1898, of Mr. McTurk (B. C-C. App., p. 404) who says:

"There is no record of the Spaniards ever having traversed" the Essequibo and Massaruni, "and only on two occasions in the last two centuries does any record appear of their presence on the Cuyuni."

Mr. McTurk doubtless referred to the capture of the Dutch post in 1758 by Bonalde, and to De La Puente's expedition in 1788. His statement only goes to show that he failed to examine the evidence annexed to the British Case.

As to the coast territory, the trade was even less exclusive than in the interior. This question has been considered at length in the chapter on Political Control in Barima, and it was there shown that the supposed Dutch trade with the Indians of Barima was a fiction totally unsupported by the evidence in the case.

There was substantially no Dutch trade with the natives in the Coast Territory. Dutch trade existed, but it was entirely a trade carried on between the two colonies. This trade was at first carried

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on by the Dutch going to Orinoco, and afterward by the Spaniards going to Essequibo. Great difficulties were encountered by the Dutch in its pursuit, owing, as they claimed, to the arbitrary conduct of the Spanish authorities in reference to their traders, or, as the Spanish claimed, to the misconduct and violation of local regulations by the Dutch traders themselves. As far as the present question is concerned, it is immaterial which of these two causes produced the result, although there is no doubt that the Dutch gave frequent cause of offence, especially by attempting clandestinely to pass up the river, and on one occasion at least a Dutch trader in the employ of the Company received explicit orders from the Commandeur that if he was prevented from openly trading at Orinoco he was to evade the prohibition by secretly going into the Aguirre and trading there (B. C. II, 5).

Whatever the cause may have been, the fact was that the Dutch gradually did less and less in the way of prosecuting the trade with the Orinoco, only two of their settlers being at the last engaged in it and their boats being mostly manned by Spaniards (V. C. II, 148). Finally, they abandoned it altogether, and, in accordance with what had been the policy of the Director-General (*Id.* 120) and the express desire of the Company (*Id.* 146), the trade was directed "into such channels that it must be carried on from Orinoco to Essequibo, by the Spaniards," instead of, as formerly, by the Dutch from Essequibo to Orinoco.

The Spaniards, however, were not the only nation that traded in the interior and in the coast territory. It appears from Dutch documents that the English and the French also traded within the territory, and that no attempt was made by the Dutch to expel a these traders. They bemoaned the loss of trade, but they made no representations either to the British or to the French Government that the trade was an invasion of the exclusive rights of the Dutch. Nor does it appear from the correspondence that such an idea ever occurred to them.

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This is shown by the evidence annexed to the British Case as well as to that in the Case of Venezuela.

As early as 1683 the Commandeur wrote (V. C. II, 44), speaking of the trading qualities of the Indians:

"For these people, like irrational animals, listen to no argument; inducements of every kind—good offices, wares—have no effect upon them: they meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly squares with the truth, on account of the trade which the French from the islands carry on there."

This statement is most significant. It shows that in 1683 trade relations had been established between the Indians and the French, which had not yet been established between the Indians and the Dutch. It shows that the French were freely carrying on a trade in the disputed territory "in Barima and other places," and that the question of the French right to carry on this trade was a question with which the Dutch did not consider themselves as being concerned. It shows that this trade had existed for some time, and it is spoken of as being carried on as a practice; and, finally, it shows that it was carried on by French who came even from the islands—that is to say, from the West India Islands—for the purpose.

A year later, when the French attacked the fort at Orinoco and captured it and held possession of it for a short time, their intrusion into the trade of the disputed territory became even more extensive.

In 1685 the Commandeur reported (B. C. I, 188):

"Even old hammocks for negroes are scarcely to be found for the prosecution of the annatto trade, as the planters also collect these from far and near for their slaves.

"The French in the Barima come and fetch them even as far as up in the Cuyuni, and have burned there the houses of the Pariacots, and have driven them away; the latter collect the balsam from the trees, and this is the reason that Daentje, the negro, has come back two weeks ago without bringing with him a single pound of balsam."

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Eighteen months later, in June, 1686, the same conditions prevailed. The Commandeur said (B. C. I, 201):

"Just as I am closing this, Daentje, the Company's old negro, comes from the savannah of the Pariakots up in the Cuyuni River. He has been away for fully seven months, and was detained quite three months by the dryness of the river. All that he has been able to obtain is a little balsam oil and hammocks, because the French are making expeditions through the country up there in order to buy up everything."

Notice the particularity of the Commandeur's statement. The French are not raiding the Cuyuni; this is no foray or plundering expedition of which he is speaking, but he says specifically that his man cannot obtain anything but a little balsam oil and hammocks, because the French are making expeditions through the country up there "in order to buy up everything."

In January, 1689, the Commandeur wrote (V. C. II, 59) that:

"The French are daily sojourning in Barima with the Caribs, often with two or three barques, and the English from the islands may do likewise."

In October of the same year he wrote (V. C. II, 62):

"The French are making a *strong-house* in Barima; they come there often with 3 or 4 barques to traffic with those hostile Caribs, and threaten soon to come and pay us a visit."

This is reported to the Company without comment as far as the fact of the maintenance of the trade by the French is concerned; and the Company, in May, 1690, replied (V. C. II, 63), repeating at length, as was their custom, the statement above quoted of the Commandeur; but the Company made no comment upon the fact that Frenchmen were trading in the territory.

In 1695 the Commandeur reported (V. C. II, 64) that "some French, aided by Caribs from Barima, are staying in the mouth of the River Pomeroon."

As late as 1735 (App. Br. II, 21), the Court of Policy in its Proceedings referred to "some Frenchmen of Martinique, who likewise traded there [in Barima]."

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Thus, for over 50 years the French had traded freely and at will in the Barima. Their trade was much greater than that of the Dutch ever was.

The colonists from Surinam likewise traded in the territory in question. With reference to their trade, the position of the Essequibo colony was peculiar. The latter was the creature of the West India Company, a company organized for purposes of trade. The original charter of the West India Company had given them exclusive trade rights over the continents of America and Africa, exclusive, that is, as has frequently been said, of other Dutchmen. In 1674 this charter had been modified. The Company, however, still assumed to themselves the trade rights which had been given by the earlier charter—the right, that is, to exclude other Dutchmen from trade in America, even in the territory of other States. This has been clearly shown in the citations that have been made from the correspondence between the colonists, the Commandeur and the Company from 1712 to 1717 (Letter of Commandeur, April 19, 1713, V. C. II, 75; letter, May 31, 1713, *Id.*, 75; letter of West India Company to the Commandeur, May 14, 1714, *Id.*, 76; Memorial of the Free Settlers, May 24, 1717, *Id.*, 77).

In the position of affairs thus described, where the Surinam Dutch were competitors of the West India Company, and were in theory, though not in fact, excluded from trade, not only in the disputed territory, but in the Orinoco and Trinidad, no territorial rights could be acquired by the Company through or by reason of the performance of any prohibited acts by the Surinam colonists. According to the West India Company, the possessions of the Spanish Crown in South America were within the charter of the Company. The Company would not tolerate "that the inhabitants of Rio Surinam carry on any trade at places lying under the charter of the Company" (V. C. II, 71), and issued its order to the Commandeur, in 1704, to prohibit them.

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The fact, however, is that the prohibition was totally disregarded at all times by the inhabitants of Surinam. The Essequibo settlers, in their Memorial complaining of the action of the Company, said that the Company's prohibitions were enforced only against themselves and that they were compelled to "see the profits which were to be expected" from the trade "accrue before our eyes to our neighbors, to wit, the colonists of Surinam and Berbice" (V. C. II, 77). They added that the prohibition "favors the inhabitants of Surinam and Berbice, and also encourages them to push on the business more and more to their profit."

They said further, that whenever a canoe of Surinam or Berbice "met any free Indians who have red slaves for sale, they buy the same in," and that they "traffic in the rivers Marocco, Weijne, Barima, Pomeroon, Orinoco, Trinidad, and wherever it is convenient to them," "being well pleased that the Essequibo inhabitants were oppressed by those who ought to protect them and their gains . . . taken away and driven into the Surinam purse."

It appears from the above, that while the Dutch had a considerable trade with the Spaniards, which the Spaniards equally enjoyed with the Dutch, the Dutch of Essequibo had no trade in Barima, and that what trade they had in the interior was not exclusive either of Spaniards or other foreign nations or of the Surinam Dutchmen.

III. Was the Trade carried on under a Claim of Right.

Attention has already been called to the fact that the Dutch never made any claims in respect to the disputed territory except in their first Remonstrance, where their only definition of a claim was to the branches of the Essequibo, which was afterwards withdrawn, and in their second, where they complained of the prohibition against fishing, which they claimed by immemorial use, and declared the Waini mouth their territory.

The territorial claim of 1759, whatever it was, was certainly not

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a claim based on an exclusive right to trade. It was not a claim to a right to trade, nor had it anything to do with trade. Claims to an exclusive right to trade, if made at all, should have been made long before this, for the trade from the beginning was not exclusive. It was quite as much Spanish as it was Dutch, and during the later period much more Spanish than Dutch. Yet there is in the record no single instance in which the Dutch, officially or unofficially, complained that Spaniards traded within the territory in dispute. Moreover, during a large part of the time trade was carried on in the territory by the French. Repeated allusions in the Dutch correspondence indicate this. Yet no complaint was ever addressed to the French Government on this account. Nor was the slightest attempt ever made to check such trade, either by actual force or threats, or even by persuasion or remonstrance. No claim to exclusive trade was ever made.

Even when the Spaniards went so far as substantially to exclude the Dutch by their organized and systematic patrol, during the second half of the eighteenth century, did the Dutch raise a syllable of complaint against their exclusion from the territory? The whole course of their correspondence shows that they never had a thought of setting up a claim of exclusive right to trade, and where the Spanish trade in horses was concerned, they even went so far as to admit not only that the territory was the territory of the King of Spain, but that he was entitled to prohibit their trading thereon, and they acquiesced in the prohibition.

The position of the Indians in this matter is also to be noted, because the Spanish and foreign traders used not only the territory for purposes of trade, but they used the Indians. They not only traded in the territory, but they traded with the inhabitants of the territory. This has a double aspect, as to trade relations and also as to Indian relations.

It is asserted on the part of Great Britain that the Dutch exercised an extensive control over the Indians. If that were so, why was not a command given to the Indians not to trade with others

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than Dutchmen? There is no pretence of any such command. There is no pretence even of any such suggestion. The Indians within the disputed territory traded with whom they pleased. The Dutch never visited them with any penalties for trading with other nations, or attempted so to visit them. In one instance, indeed, when the Dutch meddled with their wars, they threatened to go to Barima and trade with other Europeans. No Indian was ever arraigned by the Dutch for trading with the Spaniards or anybody else. The Spaniards came into the territory with force and patrolled it, interrupting Dutch trade in slaves and other products, yet the Dutch remained silent. The British and the French traded within the disputed bounds, and though the Dutch suffered from the competition no suggestion was ever made to their Governments, or to anybody else, that this was an intrusion upon the Dutch. The agents of the Dutch West India Company, including the Governor of its colony, treated these regions as places which might be freely visited by the Spaniards for surreptitious trade with themselves and for free and open trade with the natives. Finally, while the Dutch West India Company lamented the loss of trade that went to other nations, it never in a single instance set up a claim based upon the establishment of an exclusive right of trading there.

To speak of such a trade as the basis of, or as implying or leading to, political dominion is not only wholly unwarranted, but does not stop much short of the absurd. The Indian who, in the fastness of the wilderness, exchanged a hammock his squaw had made for a Dutch knife, with a man in a canoe whose skin was only a little more shaded than his own, and who was only there by the Indian's will and license, was not put upon any notice of a Dutch claim to sovereignty. He was just as free to barter his hammock to a Spaniard or to a Frenchman. Neither of these was kept out by the Dutch. On the contrary, he often saw Dutch and Spanish "horse kopers" and "cattle kopers" meet and trade on the Cuyuni; and had himself sold hammocks to the French, both in

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Cuyuni and in Barima, without being brought to book by the Dutch for doing so. He had tartly told the Dutch that if they meddled with him in his tribal wars, he would go to the Barima and give his trade to others. And the Indian knew other facts: that Spain claimed that region, and had sent her priests and soldiers into it; had summoned him to her missions; had punished him for his acts of disobedience, and the Dutch for their attempts to establish a post there. He knew that Spain asserted and enforced her right to the territory, both in Cuyuni and in Barima; and he knew also that the Dutch had utterly failed to enforce, or even to claim, either against him, or the Spaniard, or the Frenchman, an exclusive right to trade there.

Again, that the Company did not claim Barima as their territory, and therefore did not claim an exclusive right to trade there, would seem to be made certain by the letter of the Dutch Director-General to the Governor of Surinam, where he said that the mention of "the river Barima in those passes causes complaints from the Spaniards, who, maintaining that the river belongs to them, in which I believe they are right, some of these passes have already been sent to the Court of Spain" (B. C. III, 114).

The man who wrote this was the representative of the Dutch Government and of Dutch sovereignty in Guiana. If there was an exclusive Dutch claim to trade in Barima then being asserted, he was the man to assert it; yet we have from him here a distinct admission that, in his opinion, Barima was Spanish territory. It follows that the trade conducted by him there, if any, must have been regarded by him as a trade protected only, as was the trade further up the Orinoco, by the sufferance or connivance of the Spanish authorities.

The Company was even more in the dark in 1761, when it demanded of the Director-General (V. C. II, 143) "the reasons why you deem that everything which has happened on this side

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of Barima must be deemed to have occurred on the territory of the Company."

It would seem from this that the Company itself did not regard either the Barima, or even the territory to the east of it, as being in any respect theirs.

Still further, when the Company was finally abolished, and the colony of Essequibo had passed into the hands of the State and was directly managed by the Council of the Colonies, the Governor-General himself, Van Grovestins, stated of the Moruca that it "up to now has been maintained to be the boundary of our territory with that of Spain" (V. C. II, 248).

This is the last word on the subject, uttered by the highest authority in the colony and directly representing Dutch sovereignty.

In reference to Barima, the Company had also admitted that it had no exclusive rights. It was in 1683 that Beekman, referring to Barima, stated that he thought "the Company can do as good a trade there in an open river as can private individuals" (V. C. II, 45).

What does Beekman mean by the Barima being an open river? He means that it is a river open to the Company and to all the rest of the world. He certainly does not mean to assert an existing claim to exclusive trade in the river. His words distinctly negative such an idea. In fact, he goes on to express the wish that the Company would take the river into possession, as he had done provisionally. But the suggestion was never adopted by the Company, and the river, to which the Company certainly at this date made no claim, was never afterwards brought into possession by any act of theirs.

IV. Was there a specific area?

In view of the history of the boundary question in the correspondence of the Dutch authorities, how can it be said that the Dutch, by reason of trade, have extended their dominions beyond

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the limits of the Treaty of Munster within a specific area? What is the specific area of the claim? Storm, the Director-General of the Colony who was longest at its head stated that he did not know the bounds; that he wished the Company would decide; that he wanted information as to where the boundary was; that it was a source of embarrassment to him not to know. On this point the Government could not help him. Storm expressed the opinion, sometimes, that a given point was within the boundaries; in his next letter he moved the boundaries forward; in his third letter he moved them back. Sometimes he would say that as to a particular point it was doubtful. But the final claim made as to the interior was simply a reversal of the previous claim of the Cuyuni basin, and in the coast to a boundary which practically concedes the whole territory west of Moruca to Spain.

Not only was there no claim to a specific area, but the trade itself was not within a specific area. How are we to find the limits of a claim to exclusive trade when that trade paid no regard whatever to acknowledged Spanish boundaries, but crossed them whenever the connivance of a Spanish Governor could be secured, and in those unpeopled tracts where it could not be secured, pursued it furtively and clandestinely?

The limits of Dutch trade were not the limits of Dutch territorial claims. Their trade was extended to all places that they could reach with safety, where attractive commerce offered itself. That the Dutch trade did not involve the idea of any specific area, and that it did not involve a claim to dominion where it was conducted, appears from the whole body of the evidence. It appears first and most conspicuously in the statement of the Company, in 1714, that it had a right to trade to Orinoco and Trinidad, &c., by its charter, and that that right carried with it the right to prohibit the trade with those localities to its Essequibo subjects.

It was shown likewise in innumerable specific cases. In 1726 the Postholder of Wacquepo was instructed to endeavor to obtain

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slaves and balsam in the Aguirre, in case he was refused permission by the Spaniards to obtain them from up the Orinoco (B. C. II, 5).

The Aguirre is a tributary of the Orinoco which is beyond the extremest claim ever put forward as to Dutch or British limits. Nobody has ever ventured to suggest that the Aguirre was other than Spanish territory.

So the fact is stated, and even deemed worthy of special mention in the British Case (p. 48), that a Dutchman had been eight years domiciled in the same river, the Aguirre (B. C. IV, 20). If the fact that a slave-trading Dutchman lived for eight years in the Aguirre is a foundation for Dutch dominion, why does the British claim not include the Aguirre? And if there is no claim on the part of Great Britain, as the grantee of the Netherlands, to the Aguirre, why is the fact mentioned that a Dutchman was there? It might with equal propriety be mentioned that a Dutchman once lived for eight years in La Guayra or Caracas.

The West India Company no more limited its trade by the limits of its sovereignty than did the Hudson Bay Company limit its trade with the Indians. The charters under which the West India Company was operating contain a distinct disclaimer that the trade they were to conduct was to be limited by the bounds of Dutch sovereignty. The first charter embraced the whole sweep of the east and west shores of the New World (except north of Newfoundland on the east). It did not assume an exclusive right of trade within the regions described except as against other Dutchmen, and all the trade regulations that are cited in the British Case are to be read in the light of this established fact, that the exclusive trade rights of the West India Company were exclusive only as to other Dutchmen. Certainly England did not treat these charter concessions as limiting her rights to trade to regions not actually settled by the Dutch.

There was no specific area. The wandering tribes were met where they could be found, and unless the word "surrounding"

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is given a tremendous sweep, the territories into which they carried their trade cannot properly be described as "surrounding" their settlements.

V. Was it Exclusive?

As against this supposed claim to an exclusive right of trade, we find in the evidence that the French, the English, and above all the Spaniards, traded freely in the territory. When was a claim to an exclusive right of trading within the disputed territory ever enforced against any of them by the Dutch? It is enough to say broadly that the exclusion of the Spaniards from the region west of the Moruca and above the falls of the Cuyuni was never accomplished by the Dutch, whether their coming was for trade with the Indians or trade with the Essequibo Dutch or to patrol the territory in the exercise of a police jurisdiction, or for the special purpose of removing a Dutch Postholder and destroying his post. In fact, so large a part of the earlier Dutch trade to the Orinoco and to the savannas was a direct trade with the Spaniards that it is idle to predicate upon it anything as to Dutch claims to dominion against Spain. The Dutch West India Company's charter contemplated just such trade—trade to be conducted with the natives or with Europeans in the territories assigned to them, and made possible by the absence of other Europeans or by the consent or connivance of the local authorities.

As the Dutch did not make any claim to an exclusive right to trade as against the French during the long period when they were so active in trading in this region, neither did they enforce any such claim. The French came and went at will. The Dutch Governor chronicled their movements, reported to his Company how much damage they were doing by their trading competition, how great the loss of profits was in consequence, and how his negro traders were compelled to return empty-handed, because all the goods were bought up by the French. But the French continued the trade without let or hindrance.

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If the Dutch had had that extensive control over the Indians that the British Case pretends, they could have stopped all this trade simply by a word to their Indian subjects. But the word was never uttered. There is not in the whole records for one hundred and sixty-six years, where the facts in reference to the conferences, talks and so-called agreements of the Dutch with the various Indians are minutely chronicled, a single intimation that a Dutchman ever addressed an Indian on the subject of trade with a view to the exclusion of anybody from that territory. On the contrary, it appears that from time to time the Indians did exclude the Dutch. An Indian war put an end for the time being to the Dutch trade. The Indians at their pleasure cut off the Dutch, even from their "provision chamber" in the Cuyuni. The Dutch dared not trust themselves among the Acaways. In 1673 Rol, the Commandeur, had to wait until peace had been made between the Caribs in Barima and the Arawaks to send a boat after crab-oil.

When the conditions that prevailed both in the interior and the coast, as previously described in this Argument, are considered, the assertion that the Dutch enforced in this territory an exclusive right to trade seems little less than grotesque. Take the history of Cuyuni from the time when the Dutch first began to assert anything in reference to it by the establishment of their post. The post was immediately cut off, and from that time on the correspondence of the Dutch Governor about Cuyuni is little more than a record of what his outpost at the falls told him of the occupation of the river by the patrols of the Spanish, and their frequent visits to the falls themselves.

We cannot here repeat all the citations that have been already given from this correspondence. The distress of mind, the despairing tone, the discouragement of the Director-General at the failure of his efforts to "extend the boundaries" by the establishment of the post and at the result which he had so little foreseen, namely that the attention of the Spanish was first

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drawn to Dutch encroachments and that from that time on they did not propose that there should be any question there about Dutch dominion, are fully pictured in the letters that passed from Essequibo to Middelburg.

All this time the authorities of Orinoco were making more active and complete their supervision and control of the district, until finally they built their fort on the Cuyuni and sent down their officers to capture Dutch scouts at the very falls themselves.

No less graphic is the picture that is presented as to Barima. After changing front innumerable times, after naming every river in the territory as a possible or probable boundary, Storm gave up the whole subject. His people had never traded to any extent in Barima, except by way of passing through to the Orinoco. Finally, even this was dropped, and the entire trade was carried on by the Orinoco Spaniards themselves, who brought their wares to the custom-house at Moruca, where they paid a five per cent. duty.

In the meantime, and apart from trade, what is the control which is asserted over Barima? Is it Dutch control? The Dutch could not go into the territory even to pursue their runaway slaves. If they did, they were sure to be seized and carried off to an Orinoco prison. In Barima, the patrol was even more active than in Cuyuni. The great facility of approach, the absence of obstructions at the entrance of the great avenue that passed through the whole length and breadth of the territory, made it easy to carry on this patrol exclusively by the coast-guard vessels.

The mobility of the Spanish police force is shown by the reports, which then came thick and fast, of their presence now here, now there, first at one point, then at another point, in the territory; to-day they are in Barima, to-morrow in Waini, next they are in the itabos, then in Pomeroon, then in Moruca. Letter after letter of the Director-General reports their movements and the active measures which they were taking in the ex-

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ercise of control. Cierto captures half a dozen boats in the Barima; Flores burns up the plantations of La Riviere and, on the flight of the inhabitants, carries off all the movable property to be sold at Santo Thome. In the same way Flores is reported as driving out the Surinam traders (V. C. II, 120). Finally, Beltran, the "Mattheo" of the Director-General's letters, is appointed to the command of the coast-guard, and for more than ten years his name is the most conspicuous in the annals of Barima.

The mouth of the Orinoco is not neglected. The Governor himself cruises here for a couple of months with two vessels. Every Dutch fishing smack that attempts to go there or to the mouth of the Waini is seized. Contrary to the practice of the Dutch in asserting their so-called claim, the seizures at the mouth of the Orinoco include not only the Dutch, but the French, the English and all other foreigners. Indeed, the one conspicuous fact about the coast territory, from Orinoco to Moruca, during this period is the effective supervision maintained there by the Spanish authorities.

We must once more call attention to the statement in the British Case which opened this chapter, that:

"Where, as was usually the case with the early European Colonies, the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area surrounding its settlements, that area was undoubtedly effectively controlled."

It is the British Case itself which defines all the attributes which are to make a trade claim the foundation of a claim of control or dominion: that there should be a claim; that it is a claim to an exclusive right of trading; that it is a claim to an exclusive right of trading within a specific area; and, finally, that the claim is enforced.

Taken by the test of the British Case itself, the alleged Dutch claim (which the Dutch never made, but which Great Britain now makes) fails in every particular. It was not a claim; it was not exclusive; it was not to a specific area, and, finally, it was not enforced.

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CHAPTER XV.

ADVERSE HOLDING—INDIANS.

In view of the paucity of facts tending to show any settlement, either with or without political control, in the territory in dispute, the alleged control by the Dutch is very confidently and more largely rested, in the British Case, upon their relations with the Indian tribes, and the argument is that, by reason of these relations, the occupation of the savage tribes became a Dutch occupation, and as effectual to establish the Dutch title as if every savage had been a Dutchman.

The laxity of the rule here suggested in the British Case is in strong contrast with the technical strictness maintained as to the discoverer's title. He must occupy on the run, and effectively, by actual posts and colonies, lest mankind should be excluded from the use of the lands he has discovered, while an intruding nation may follow the track of the discoverer and establish a wide sovereignty by alliances with savages, without introducing a settler; and even more, he may extend the borders of a settlement he has made by inciting savage hatreds against the settlements of the discoverer and by alliances up to the very doors of such settlements.

The relations with the Indians are divided into two classes: trade relations, and those in the alleged exercise of political control. It is contended that either furnishes an equivalent under the Treaty to actual occupation by the whites. The proposition is put forward in the following extract from the British Case (p. 149):

"Effective occupation means the use and enjoyment of the resources of the country and the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

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Effective occupation is here defined to have two distinct elements. The presence of these two elements, it is contended, constitutes effective occupation, These are:

(1) The use and enjoyment of the resources of the country.

(2) The general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf.

Here we have to consider what is meant by "the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

"Inhabitants" clearly refers here to native inhabitants. Of white inhabitants in the disputed territory there were none except the Spaniards about the upper waters of the Cuyuni and its tributaries. There is no pretense that these were controlled by the Dutch, and territorial control, as it relates to white persons found within the territory, has been shown to have been exercised far more completely and more continuously by the Spaniards than by the Dutch. The only general control of inhabitants in the territory to which this doctrine can refer is the control of the native inhabitants.

The principles governing this contention that title by occupation may be acquired by control over Indian tribes must be discussed in the light of the authorities. Upon this particular point the British Case itself makes this statement (pp. 155–6).

"Where, as was usually the case with the early European Colonies, the colonizing Government enforced a claim to dispose of an exclusive right of trading within any specific area surrounding its settlements, that area was undoubtedly effectively controlled, and its resources in their then state of development were effectively appropriated by that Government.

* * * * * *

"Again, where the Government of a settlement acquires the exclusive ascendency over, and alliance with, surrounding tribes, and by that means excludes foreign influence from the territory which they inhabit, that territory is effectively occupied as against the colonizing enterprise of any other country.

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"The American Indians were never treated, as between European nations, as possessing any independent sovereignty, however completely their tribal polity and their occupancy of the soil might be for the time being respected by the Governments under whose influence they came. This is the established view in North America, and it was certainly not less true in South America. It follows that the State controlling the Indians must be recognized as between Europeans as having the sovereignty."

The following, from the Counter-Case of Venezuela (pp. 96–7), makes up an issue of law to which we now address ourselves:

"If it were possible to prove, beyond the peradventure of a doubt, that the Indians had consented to accept the Dutch control and that the Dutch exercised it, Venezuela considers, and will claim, that it could form no foundation whatever for a territorial title. As to such right or title, claimed to be derived by the Dutch or British, either directly or by implication, from or through the Indian tribes, it will be contended, *first*, that these tribes were wanderers, and had not even possessory titles to any defined territories; *second*, that by the law of nations and the universal practices of all European States the American tribes having distinct territorial bounds had only a possessory right to the lands occupied, and that this right they were incapable to transfer except to a nation that had already, by discovery or other acts necessary to the appropriation of wild lands, obtained the ultimate title to such lands—such nation having an exclusive right to extinguish the possessory right of the tribes; *third*, that what such tribes could not do by deed or treaty of cession, much less could they do by any submission or alliance; that the prior right of Spain could not be diminished or affected by any other Power by virtue of any acts or submissions of the tribes; *fourth*, that such acts and submissions of the tribes were equally ineffectual to extend the political control of the Dutch or the British."

In the British Case, all the facts relating to Indian relations are grouped under the head "Political Control," and would, therefore, seem to be addressed to that clause of Rule (*a*) of Article IV of the Treaty which says:

"The Arbitrators *may* deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription."

But the statements from the British Case given above seem to affirm that political control is not only something that may, by

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this special provision of the Treaty, be treated as the equivalent of actual occupation, but that, by the general principles of international law, it is an actual occupation.

The Treaty, however, plainly implies that the case must be especially clear and very strong before exclusive political control can be accepted as the equivalent of an actual adverse occupation, and that but for this provision of the Treaty it could not in any case be so accepted.

We insist that this provision of the Treaty must be interpreted in the light of all the rules of international law bearing upon the subject and not inconsistent with the rule prescribed in the Treaty. It is not to be construed as allowing political control to be derived from acts and sources to which the rules of law and the practice of all nations in America deny that effect.

We assert with confidence that writers on international law deny the right of savage tribes to the dominion of lands they occupy, and their competency to cede sovereignty or dominion to any European nation. Nothing that these tribes can do, by treaties of cession or by alliance, can affect a dispute between two European nations as to the sovereignty of the country occupied by such tribes.

The British Case admits that the American Indians were never treated, as between European nations, as possessing any independent sovereignty. They can have, then, no territorial dominion that they can transfer, and quite clearly none that can be derived from them by conquest. That cannot be taken from one which he does not have, either by deed or by force. A European dominion in America was never, by any nation, rested upon cessions or conquests from the natives. It is a clear *non sequitur*, as well as a perversion of American history, to say that "the State controlling the Indians must be recognized, as between Europeans, as having the sovereignty."

Great Britain would have stopped at the Alleghanies if she had allowed this deduction in favor of the French, and the United

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States would have lost the Northwest Territory if it had been allowed in favor of Great Britain in 1811–14. If Indian submissions and alliances could have been made the basis of territorial sovereignty, the map of North America would have been greatly changed. If there had been a single instance in all of the disputes as to American territories and boundaries where any European nation had based a successful claim to territorial sovereignty upon the submission of the Indian tribes or upon a conquest from them, it would have been cited.

In fact, it was never allowed and never before claimed, we think, that a title by discovery might be ousted or terminated by another nation through the acquisition of control of native tribes—effected by paltry presents or by aiding their pursuit of plunder or their taking of European scalps.

The British Case (p. 156) gives an extract from the opinion of Chief Justice Marshall in the case of *Johnson* v. *McIntosh* (8 Wheaton's U. S. Sup. Ct. Reports, p. 573), and apparently approves the doctrine announced by that great jurist.

The extract does not give a sufficient understanding of the case, and we therefore turn to it to see what it was that Chief Justice Marshall said.

The case presented the question of the validity of a grant of lands in the now State of Illinois by Indian tribes to a certain company of individuals, and the principal question was whether this grant was valid as against the United States.

The Chief Justice declares (p. 576) that the Governments of Europe settling America agreed to this rule:

"That discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession. The exclusion of all other Europeans, necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented."

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He declares, as we have seen, that

"No one of the powers of Europe gave its full assent to this principle, [of title by discovery] more unequivocally than England;"

and he particularly points out, as we have seen in our discussion of title by discovery, what tremendous sweep was given by Great Britain to this title and to her feeble settlements on the seaboard.

He further says (p. 583), speaking of the Franco-English Treaty of 1763:

"Great Britain, on her part, surrendered to France all her pretensions to the country west of the Mississippi. It has never been supposed that she surrendered nothing, although she was not in actual possession of a foot of land. She surrendered all right to acquire the country; and any after-attempt to purchase it from the Indians, would have been considered and treated as an invasion of the territories of France."

What the Chief Justice here says as to the actual possession of this country west of the Mississippi by Great Britain is true also of France.

Again, the Chief Justice says (p. 592):

"The absolute ultimate title has been considered as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring."

This case clearly supports our proposition that nothing done by or through or upon the Indians can affect the question of title as between two European nations; that no nation that has not previously acquired dominion can take from them even their possessory right to the use of the soil. To acquire sovereignty of the territory is the first step, and to this step no act of the native tribes can aid or contribute in any degree.

The title of Spain, the admitted discoverer of Guiana, could not in any way be affected, could not be terminated, nor could any rights against her be acquired through the Indians. If their friendship with or submission to this nation or that is to decide the question of dominion, we have the paradox: Those that have no sovereignty or dominion may assertively cast dominion here and there at their pleasure.

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Twiss, in his discussion of the Oregon Question (p. 251), says that the United States Government asserted the following rule:

"Whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, by grants, or conquests of the natives within the limits described."

This is the principle declared in *Johnson* v. *McIntosh*. It is that lands occupied solely by savage tribes are *res nullius*, subject to discovery and occupation, and the title is acquired only in that way. Phillimore quotes with approval this rule (1, Sec. 238), and adds, in a footnote:

"In the case of *Johnson* v. *McIntosh*, decided by the Supreme Court of the United States, A. D. 1823, the practice and law on this subject are fully considered."

The principle is thus stated by Phillimore, in the section above cited, as one of the principles underlying title by discovery, as follows:

"A third rule is that whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European Powers."

The right of the aborigines, whatever it may be, is vested in the original European occupant by the mere fact of occupancy. Says Twiss (Oregon Question, p. 176):

"A further accessorial right of settlement has, in modern times, been recognized by the practice of civilized nations in both hemispheres, namely, a right of pre-emption from the aboriginal inhabitants in favor of the nation which has actually settled in the country. It is this right which Great Britain asserts against all other civilized nations in respect to New Zealand, and which the United States of America assert against all other civilized nations in respect to the native Indians. The claim involved in it is evidently based upon the principle, that the acquisition of such territory by any other nation would be prejudicial to the full

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enjoyment of the existing territorial rights of the nation which has made settlement there."

In the present case this accessorial right appertains to Spain. Her rights as a discoverer and occupant could not be bargained away to the Dutch by the savage tribes. Even if her rights as a discoverer were not perfected to these lands, her inchoate title could not be terminated by any act of the natives. If the British view is to prevail, and these lands were open to the occupancy of any nation, the basis of the title of any incoming nation is settlement and occupation by the whites. Even lands that are *terra nullius* cannot be made Dutch territory by the exchange of some blue beads and a silver-tipped staff with the Indians. If that had been accepted as occupation, it would have allowed the perpetuation of the savage use of the American continent, and have permitted the second comer to have terminated the title of the discoverer, upon the ground that he had not occupied, by continuing the savage occupancy.

Twiss (Oregon Question, p. 252) says that the nation first occupying a territory has the sole right of acquiring the soil from the natives by cession, purchase or conquest.

Twiss (Law of Nations, Sec. 135) quotes Chancellor Kent as saying in his Commentaries (I, p. 258):

"The principle is that the Indians are to be considered merely as occupants to be protected while in peace in the possession of their lands, but incapable of transferring absolute title to any other than the sovereign of the country who has an exclusive right to extinguish the Indian right of occupancy either by purchase or conquest."

That is, the Indian's possession and occupancy is that of the discoverer. He cannot attorn to another. The adverse white claimant who comes in against the discoverer's title must occupy for himself, or there is no ouster. He may not bribe the occupying tenant.

When the Spanish title once attached to this disputed territory, the Indians held for Spain, and they could do absolutely nothing to diminish her title.

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The incidents connected with the British settlement of New Zealand in 1840 deserve careful study in connection with this subject.

New Zealand first attracted public attention by the desire of some of the Australians to acquire it and by the formation of a private company for that purpose between 1835 and 1840. This was just at the time when the efforts to secure West Indian emancipation (which took effect August 1, 1838) had aroused a wave of philanthropy towards the dark races. Apparently under the influence of this, and of a disinclination on the part of the Government to assume the burden of acquiring a new continent for the Australian settlers, who had barely occupied the border of one corner of their own, the British Government then in office, somewhat fortified, perhaps, by some previous expressions, undertook to treat the New Zealanders as constituting a sovereign State.

But as soon as they began to put this theory into practice they encountered the evils which naturally flow from proceeding upon a false basis. It involved them in various troubles, and did not help the natives, who either parted with their lands for an axe or a gun, under guise of purchases or treaties, or, if they got a substantial payment, wasted it at once in debauchery.

During the next five years (and indeed later) the resulting troubles led to some very elaborate inquiries by Parliament. The first important result was a Report of July 30, 1840 (Parl. Papers, 1840, *Reports of Committees*, vol. 7).

The colony, says the report, has become involved in difficulties which may require legislation:

"That remedy would, in the opinion of your committee, have been now uncalled for, if the British Government had, from the year 1769 downwards, never lost sight of the principle which was *formerly acted upon by this country and by all other European powers* with regard to their North American possessions, and had refused to recognize any titles to land founded on purchases made by private persons from savages.

"This principle has been adopted by the United States, and it has

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constantly guided their government in its dealings with the various Indian tribes inhabiting the North American continent, and it has been solemnly declared by the Supreme Court of Judicature in the United States to be a principle of international law. See particularly *Johnson* v. *McIntosh*, 8 Wheaton's Rep., 543; Kent's Com. iii, 576. According to this principle, the nation by whose subjects a new country is discovered, acquires thereby a title to its possession as against all foreign powers. That title, when completed by occupation, gives to the discovering nation the sole right to purchase the soil from the natives, to establish settlements within its territory, and to regulate its relation with foreign powers. Upon this principle the governments of Europe, as well as that of the United States, have asserted their right—a right qualified only by the moral obligation of acting with justice to the aborigines,—to grant lands to individuals in territories so acquired by them, and upon it the British Government has recently set aside purchases made by individual settlers from the natives in the neighborhood of Port St. Philip."

Another Parliamentary Committee re-examined the subject. Their report is in Parl. Papers, 1844, *Repts. Committees*, Vol. 13:

"They say (p. v.), that Captain Hodson, under authority from the British crown, made in January, 1840, a treaty in the nature of a protectorate and acknowledgment of sovereignty with the Chiefs of the *North* island; but none with regard to the middle and southern islands. There Great Britain *assumed* sovereignty, without even a nominal 'treaty.'

"It was a mistake to do this. Sovereignty should have been assumed over all the islands. Then the clear rule is (page vi): 'that all unoccupied lands would forthwith vest in the Crown, and that, except by virtue of grants from the Crown, no valid title to land could be established by Europeans.'

"The private interest of the natives in the lands they actually occupied could then have been acquired."

The report then points out the absurdity of applying to natives who have no real idea of *ownership* of unoccupied lands, the rules of English law; and the evils which have arisen from an attempt to do so. It concludes (p. v):

"It would have been much better if no formal treaty whatever had been made, since it is clear that the natives were incapable of comprehending the real force and meaning of such a transaction; and it therefore amounted to little more than a legal fiction."

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In a communication of August 13, 1844 (Parl. Papers, 1845, *Accounts and Papers*, Vol. 33), Lord Stanley, the Foreign Secretary, disclaiming responsibility for the mistakes of his predecessors, declares that he takes the same view of the law as applied to savage tribes; but suggests that possibly it might have been open to doubt whether the New Zealanders were "savages."

It has been stated that the general doctrine of the British Case is that (p. 149):

"Effective occupation means the use and enjoyment of the resources of the country and the general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

This statement seems to point not only to the general question of control, but also in some way to the more modern principle, if principle it may be called, of protectorates. That this is its intention is confirmed by the marginal title given in the British Case, page 97, "Dutch Protectorate," which is given as one in the enumeration of items, beginning at page 84, by which the Company found it necessary "to exercise control of a political nature of the district in which trade was carried on." The intention is further evidenced by the final statement on this subject (p. 98), that

"The exercise by the Dutch of this restraining influence is in itself an instance of the fulfillment of one of the essential conditions of a Protectorate over native tribes."

The doctrine of protectorates is essentially of recent origin. Hall says of protectorates that "they may be said to be new international facts" (International Law, p. 133, note).

"In other words," says Hall, commenting upon the declaration of the Berlin Conference, (International Law, p. 119), "while ancient grounds of title are left to be dealt with under the old customary law, old claims of title if not fully established under that law, and new titles, whether acquired by occupation of unclaimed territory, or through the inability of another State to justify a competing claim, must for the future be supported by substantial and continuous acts of jurisdiction. The declaration, it is true, affects only the coasts of the Continent of Africa; and the representatives of France and Russia were careful to make formal

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reservations directing attention to this fact; the former, especially, placing it on record that the island of Madagascar was excluded. Nevertheless, an agreement made between all the States which are likely to endeavor to occupy territory, and covering much the largest spaces of coast which, at the date of the declaration, remained unoccupied in the world, cannot but have great influence upon the development of a generally binding rule."

In considering the application of this principle to the present case, three conditions are to be noted:

First, the recognized tests of a protectorate must be complied with in respect to the exercise of control over the territory.

Second, while protectorate is used as a foundation of title in cases where no other Power has a claim of title, no case is known where an attempt has been made to oust a former occupant by means of a protectorate.

Third, the doctrine is yet so recent as to be only of Conventional application, and can be extended neither to questions of occupation of an earlier period, nor to territory outside of the bounds fixed by the Treaty; nor does it bind others than those who are parties to the Treaty.

In respect to all these conditions the present case is clearly one to which the doctrine of protectorates does not apply.

In discussing this doctrine, reference will be largely made to the authority of Mr. Westlake, not only because he is an English writer of high official position and of high authority on questions of international law, but because he is one of those who, on behalf of England, has vigorously contended that a protectorate by treaty need not be accompanied by occupation, while at the same time he discerns and sets forth the limitations of such a protectorate in practice. The question is fully discussed by him in a series of articles in the *Revue de Droit International* * which was reproduced by him in a shorter form in his work on International Law (Cambridge, 1894).

Mr. Westlake lays down the general proposition that Indians or "Redskins" (that is, American Indians) "and other similar unor-

* The Series of articles was entitled *Le Conflit Anglo-Portugais*, and appeared in 1891, vol. 23, p. 243; 1892, vol. 24, p. 170; 1893, vol. 25, p. 53.

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ganized savages do not count in international law; they do not constitute a State." He says (International Law, p. 137):

"In the early times of international law, when the appropriation of a newly discovered region was referred to the principles which were held to govern the so-called natural modes of acquisition, the occupation by uncivilised tribes of a tract of which, according to our habits, a small part ought to have sufficed for them, was not felt to interpose a serious obstacle to the right of the first civilised occupant. The region was scarcely distinguished from a *res nullius*."

And (p. 143):

"International law has had to treat such nations as uncivilised. It regulates for the mutual benefit of civilised States the claims which they make to sovereignty over the region, and leaves the treatment of the natives to the conscience of the state to which the sovereignty is awarded, rather than sanction their interest being made an excuse the more for war between civilised claimants, devasting the region and the cause of suffering to the natives themselves."

(See also *Revue de Droit International*, vol. 23, p. 246; International Law, p. 147.)

Mr. Westlake quotes as correct statements of the law the decisions of the Supreme Court of the United States in *Johnson* v. *McIntosh*, quoted above; and summarizing part of them in his own words, he says:

"The Indians possessed nothing which resembled sovereignty, as the term is understood in Europe and Asia, for they were hardly 'united in a society' by a shade of organized government. Such a government alone can add the idea and the reality of sovereignty to the possession which results from occupation under a private title. Possessing neither the conception nor the reality of sovereignty, they could not transfer it to another. The Europeans who were the first to discover the territories and to establish themselves there, acquired the sovereignty of the territories for the States to which they belonged, and it passed to the colonists when the latter obtained their independence. The exercise of this right was not limited in the hands of any of its holders by any legal claim; it was only limited by the respect which conscience imposed for the right of occupation of the Indians."

The treaties at the Peace of Paris, of 1763, virtually assumed the right of the whites to the whole continent, without

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any regard to the supposed *rights* of the Indians; and partitioned it definitely, by metes and bounds, between England, France and Spain (*Johnson* v. *McIntosh*, 8 Wheaton, 583-4).

In the case of the American Indians, and similar savage tribes, without organized government or the capacity to understand it in the European sense, the theory of protectorate does not apply. So Westlake says (*Revue*, vol. 23, p. 264) that "Proctorates" are known to international law. "But the condition itself indicates that the protected States which submit to it are veritable States, and not mere savage tribes."

Mr. Westlake also states (vol. 24, p. 170), the circumstances which attended the making of the "treaties" with African chiefs, and points out their farcical character. He notes (p. 191) that on the so-called installation of a native under alleged Portuguese authority, the presents and tribute were paid *by* the Portuguese, and not *to* them, and says, "the lack of reality is sufficiently apparent."

All his comments upon these circumstances may be applied with equal force to the alleged Dutch control over the Indians in Guiana. Here, also, the tribute was paid *by* the Dutch and not *to* them, and the lack of reality is sufficiently apparent.

The description of the surrounding circumstances might in many cases answer equally well for what happened in the relation of the Indians with the Dutch of Essequibo, although in the case of the Portuguese in Africa, the ceremonies were more extensive and more significant. Westlake (*Revue*, vol. 25, p. 58) describes the form frequently adopted, which consisted in giving to a native chief rum, guns and a Portuguese flag, which he hoisted on a pole. In one case, a chief returned an English flag, proposing to join the Portuguese. The English official sent him a larger one, telling him that when he hoisted that every one would know that he was a "great chief."*

* Blue Book Africa, No. 2 (1890), p. 220.

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One of the so-called "acts of vassalage," on which the Portuguese professed to rely, but which Westlake naturally ridicules and to which the British Government refused to attach any value, is thus described:*

"The 'act of vassalage,' as it is termed, at several of which I have had the pleasure of being present, consists of palaver with the chiefs and headmen, a native war dance in front of the governor's residence, the presentation of a flag to be hoisted at the village, and the subsequent consumption of a large amount of Kaffir rum presented *sub rosa;* money gifts are frequently given to influential chiefs, and the tribe are sometimes called upon to perform slight services, for which, however, they are fully paid at the usual rate of labor. The assertion that the lands are crown lands, and rented to the natives, must appear ridiculous to any one even slightly acquainted with the Portuguese rule on the Mozambique coast, which is carried on entirely on the system of small subsidies to petty chiefs, and fostering animosity among those of more importance."

One of the most significant statements in this connection is that made by the British Consul Buchanan to Lord Salisbury, March 8, 1889:†

"Unquestionably many of the native chiefs are in favor of the Portuguese and against the English, since the Portuguese connive at the domestic or interior slave trade, and supply the natives with spirits and breech-loading guns, while the English refuse to permit traffic in any of these articles."

The above sentence might with truth have been written by any one conversant with the history of Guiana at any time in the eighteenth century, substituting the name "Dutch" for "Portuguese," and the name "Spanish" for "English." The character of the Dutch relations with the Guiana Indians is exactly paralleled in these descriptions, and the learned author who has been quoted would necessarily express the same comments upon the one that he expressed upon the other.

Neither Great Britain nor the United States, as we have seen, admitted the capability of the Indian tribes in the northwest to

* Blue Book Africa, No. 2 (1890), p. 96.

† Blue Book Africa, No. 2 (1890), p. 22.

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transfer, in the one case, the title of Great Britain to France, and in the other, the title of the United States to Great Britain.

Nothing would seem to be plainer, upon principle, than the proposition that a Dutch alliance with the Indians within the disputed territory, is inconsistent with the idea of Dutch sovereignty over the territory. It involves a necessary recognition of the sovereignty of the Indians. But, if it were possible in any case to extend the Dutch sovereignty over the lands occupied by the Caribs and other tribes by an alliance with them, there are certain conditions that surely must be observed.

Whatever the relation with the Indians was, in order to become the foundation in the Dutch of public title, or territorial sovereignty, it must answer the conditions generally recognized as necessary to establish a title by exclusive political control. This view is confirmed by the Principle of Law in the British Case (p. 149), giving a definition of effective occupation, one of the elements of which is stated to be:

> "The general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

This would seem to be simply another form of definition of "exclusive political control."

One of the first conditions, as we have already seen, of this foundation of title is that it shall embody actual control. When we come to apply this to the Dutch relation with the Indians of Guiana, we shall find no single element of it present.

The Dutch did not control the Indians, nor did they claim or exercise jurisdiction over them. They bribed, besought and entreated; but the whole history, as we find it in the documents cited both by Venezuela and Great Britain, fails to disclose a single case where the Dutch wishes or purpose were enforced against any of these tribes. The Indians kept or broke the peace as they pleased; they disregarded the plaintive appeals of the Dutch Governor, closed his "provision chamber," and set his

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authority—an authority only pretended by the British claimant to the territory—at naught.

As was the case with the Portuguese in Africa, the presents and the tribute were paid by the Dutch, not to them. It was well said by Governor Codd, of Essequibo, in September, 1813, that

"It is obvious, however, that our Colonies are tributaries to the Indians; while the proper system of policy would be to make them allies, looking to us for protection" (B. C. V, 216).

So far from maintaining the peace within the disputed territory, the order of the Dutch Governor to his subordinates was to maintain neutrality in the wars between the tribes, and that in the face of the fact that these wars were destructive of Dutch trade interests. There could, in the nature of things, be no stronger disclaimer of a right to control the Indians.

Some of the instances of failure to exercise such control may be cited.

In 1764 the Director-General was greatly exercised to establish a Dutch post in Cuyuni. He appealed to the Indians, and reported the result thus (V. C. II, 159):

"Whatever trouble I have taken, and whatever promises I have made, I have not been able to get any Indians up to the present to aid me in re-establishing the Post in Cajoeny, and without their help it cannot be done, because with slaves it is not only too costly but also too dangerous, so that I am in great difficulties with this work, and the re-establishment of that Post is, in my opinion, of the greatest necessity."

The Dutch control did not suffice to procure the aid of a single Indian in a work that the Director-General thought was essential to the safety of the colony.

In February, 1768, the Dutch colonies were in great distress and fear by reason of the fact that escaping slaves had established a formidable settlement in the interior. The help of the Accaway tribe was needed. Two of their "Owls" visited the Commandeur at Demerara, who gave this account of it (B. C. III, 162):

"After I had welcomed them with a glass of brandy and presented each of them with a suit of my every-day clothes, I asked them (after

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having acquainted them with the reason of my sending for them) whether they were willing to attack the negroes, or cut off their retreat if the negroes were attacked by the Caribs and put to flight."

Brandy and old clothes! And were the Indians "willing"? Is this the conduct and language of one who is asserting control of these people as subjects?

But the Caribs, not the Accaways, seem to have done the work. They killed seven men, one woman and a girl, and the Director-General reported (B. C. III, 166):

"They have brought seven right hands to me, and I am just now occupied in paying them."

This, we suppose, is given as evidence that Dutch civilization and political control pervaded the lodges of this tribe.

Some suspicions, however, afterwards arose that a trick had been played and that the right hands the Director-General had paid for were not those of negro slaves, but of Indians. Of this he said (B. C. III, 178):

"There was a report here that Tampoko and the Caribs had not killed negroes but Indians, and that the hands brought down were the hands of Indians. If such were found to be true I have never seen a rascally trick executed more carefully and clothed with more feasible circumstances, and I think that Satan himself might be deceived in this way."

But if the Caribs had not become tricky, it was not for want of a schoolmaster.

In February, 1768, there was a notable incident illustrating Dutch control, an account of which is given in the evidence annexed to the British Case (B. C. III, 161). The Director-General reported that he had been advised of the arrival of twelve soldiers, sent by the Company to reinforce the Dutch post, of whom it was said that they were "good recruits for Orinoco, because they are nearly all French." He reported that they were *all* French, and that all but one or two were Roman Catholics. Frenchmen were not wanted.

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The Director-General said:

"In addition to this all the Indians have declared that they will have no French at the Posts, a troop of more than 100 Warouwans, all well armed, having already arrived at the Post, Maroco saying that they came to see whether there was a Frenchman there, and intending to kill him if it were so."

This threat was taken seriously. The Dutch were not even able to control the matter of the personnel of their own posts, as against the Indians. The Frenchman, Pierre Martin, who had been somewhere on the Cuyuni, had been compelled to leave there, as the Director-General (B. C. III, 162) said, "the Indians flatly refusing to come and live anywhere near the post so long as he is there. They will have a Dutchman, they say."

In April, 1768, the Director-General reported (B. C. III, 164):

"Having also been obliged to remove Pierre Martin, the Postholder of Cuyuni (because the Indians will on no account have a Frenchman there) as well as the one in Maroco, I have no one there now but the two assistants. It now remains to be seen whether the Indians of Maykouny, whither Pierre Martin has gone, will exhibit the same feelings, in which case I shall have to discharge the man *nolens volens*. I fear very much that it will be so, because in Maykouny they are mostly Warouws (the nation which commenced and continued the work in Maroco) where they came to the Post in great numbers and well armed with the openly expressed intention of murdering a French Postholder had they found one there."

Here we have Indian control of the Dutch "chiefs." The Dutch trembled before the armed Indians who came to the post, and acknowledged their inability to protect their own Postholders against the Indian demand for their dismissal.

The Dutch West India Company approved of this. In a communication to the Director-General, in July, 1768 (B. C. III, 180), they said:

"It being hard to catch hares with unwilling hounds, you cannot do otherwise than accede to the wish of the Indians in Cuyuni and Moruca, and send no Frenchmen thither as Postholders, and therefore not even Pierre Martin, good and capable though he may be."

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But the Company could not have the services of this honest and capable man, because the Indians would not consent.

How thoroughly the Indians were unaware of their subjugation by the Dutch appears in an account given by the Director-General in February, 1769, in which he said (B. C. IV, 3):

"The nation of the Caribs, my Lords, are looked upon as nobles among the Indians. It is a very good thing to have them as allies or friends, for they render excellent services, but they are formidable enemies, capable of more bravery and resistance than one would think. When their principal or great Owls come to me, they immediately take a chair and sit down, and will eat and drink nothing but what I have myself, and they call me by no other name than that of 'mate' or 'brother.'"

These "noble" Indians were not aware that the true mode of address was "Master." They asserted equality. They were allies, not subjects, of the Dutch.

This distinctly appears again in the report of the Director-General of April 4, 1769. He said (B. C. IV, 11):

"March 16.—The chief of the Caribs, who is now here, goes up the river to-day. He has promised me to attack the murderers of the Post-holder, and to hold all his people in readiness in case we might have need of them. Commandant Backer told me this morning that he would like to come up the river, and asked him whether he would then let him be master. He answered, 'No, I am master of the Caribs. You can be master of the whites and of the other nations, and then we can together become masters of everything."

This is rather an impressive declaration. The opportunity was ripe for an assertion by the Director-General that the Dutch were masters of the Caribs, but fear of his own life and of the peace of his settlement made it impossible for him to put forward the pretension that is now urged in his behalf. We do not know whether Commandant Backer went up the river, but we do know that if he did he was not in the command of the Caribs.

The Director-General's situation at that time was rather full of distresses, which he set forth in the next paragraph:

"But, my Lords, allow me to ask what is now to be done to get food for your Lordships' slaves? The salting is now entirely stopped, not alone

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in the mouth of the Orinocque, where we had carried on the fishery from time immemorial, but there are neither canoes nor corrials to be got for the plantations or the Fort along the whole of the sea-coast, and we are shut in on all sides. I must now, *nolens volens*, buy from the English, or allow your Lordships' slaves to go without rations. . . . There being nothing on the plantations and the out-runners having come back empty-handed after exposing themselves to the greatest danger, and losing their men and boats."

The Director-General was truly not in a position to demand the title of "Master."

In 1767 the Director-General reported (V. C. II, 170) that the Indians "are unwilling to do the least thing for the Postholder, and that even when he orders the passing boats to lie to to see whether there are any runaways in them, they obstinately refuse to do so, and when he threatens to shoot upon them they reply that they have bows and arrows with which to answer."

In 1769 the Director-General narrated his efforts to get a Postholder to go to the "Crystal Mine." Not one of his Postholders at Arinda had been willing to execute this purpose, giving various pretexts; but the true cause, as the Director-General said, was their fear of the savage nations living in those parts, though these fears were "ungrounded," as he, in the security of the principal post, thought. But a man was found to hunt for the "Crystal Mine," "somewhere up in Essequibo." Being a representative of the Dutch power, the nation that "controlled" these tribes and had "sovereignty" over the territory, he thought that he might venture to dig for crystal; but the Director-General reported that "when he wished to dig up the crystal which grows there in many places in a red dry soil, the natives would not allow him to do so" (B. C. IV, 17).

Besides "a few instructions how to behave," this man had been told by the Director-General "to try and obtain, in a friendly manner, *permission* from the Wapissannes to cross the Maho and go to the neighboring nations."

In November, 1770, the Director-General found himself utterly

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unable to prevent the desertion of his slaves, and sent to the Post-holder of Arinda "to *ask* the Carib Owls, in my name, to send fifty men to watch the Dutch plantations."

Even as late as 1840, in the correspondence between Viscount Palmerston and Sir R. Ker Porter (B. C. VII, 71), the tribes living near the frontier are correctly spoken of by Lord Palmerston as "independent Indian tribes."

It appears from the above that the Dutch were very far from exercising anything that could be called actual control. Still less was their control exclusive. It was contested from the beginning. The Dutch correspondence is full of accounts of threats and assaults made by the Spaniards against and upon Dutchmen in the territory, their traders or pursuers of fugitive slaves, or employees of the Colonial authorities. They are equally full of accounts of Spanish assertion of control over the Indians manifested in acts of force. The Dutch Indian alliances themselves were based upon a recognition of the necessity of seeking aid to resist the Spaniards within the territory, and the record shows the failure of these attempts. The Spaniards in the disputed territory, both in the interior and in the coast, were continually asserting their right to control the Indians; they pursued, captured, chastised, compelled. Their relation to the Indians was not that of suppliants, but that of masters. It is suggested that this mastery was sometimes cruel, but it cannot be denied that it was the assertion of a right to control, and in sharp contrast to the bribing, coaxing policy of the Dutch.

A few instances may be noted. In 1752 "the Spaniards have attacked and driven away the Caribs below Oronoque, and these have all retreated to our side" (V. C. II, 109). In 1754 "three barques and nine large canoes have arrived there [Oronoque], and have sailed up to the fort, and that the Surinam wanderers and most of the Carib Indians have retired from Barima" (*Id.*, 116). In 1759 "the Spaniards continue to stay where they are, and to entrap and drive away all the Caraibans living there" (*Id.*, 133).

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"Cajoeny, where since the raid upon the Post by the Spaniards there are no more Indians" (*Id.*, 142). In 1761 "a party of Spaniards and Spanish Indians in Cajoeny have been down to the lowest fall where your Lordships' indigo plantation was situated, driving all the Indians thence, and even, it is said, having killed several. The Indians sent in complaint upon complaint" (*Id.*, 145). In 1762 "they [the Spaniards] are not yet quiet, but send detachments trom time to time, which come down as far as the lowest fall, close to the dwelling of your Lordships' creoles, by which both the settlers and our Indians are continually being alarmed, and take refuge each time down stream" (*Id.*, 147). In 1762 "the Spanish Indians of the Missions continue to send out daily patrols as far as the great fall . . . all the Caraibans have also left that river" (*Id.*, 149). "At the time of that occurrence [the capture of the Cuyuni post] the Caraibans were full of courage and ready for all kinds of undertaking; now they are all driven away from there and have retired right up into Essequibo" (*Id.*, 151). In 1763 "this [is] not the time to think of the re-establishment of the Post in Cajoeny. That matter will give us plenty of work to do when, with the blessing of God, all is at rest and in peace, because, the Spaniards having driven all the Indians out of the river, it will be no small matter to get all the necessary buildings in readiness there" (*Id.*, 155). In 1768 "The Caraibans of Barima . . . complained that some of our deserters with a party of Spaniards, were continually molesting them in Barima and robbing them of everything" (*Id.*, 178). In 1769 the Spanish Governor "has totally ruined it [the fishery] by driving the Warouws out of the islands" (*Id.*, 181). In 1769 Storm says: " . . . nor can we be warned in any way by Indians, there being no more of these in that river [Cuyuni]. They did begin to settle there again when the post was re-established, but the raid made by the Spaniards last year, when a large party of Indians were captured and taken away, has filled the rest with terror, and they are gradually drawing off" (*Id.*, 182). "The Spaniards are

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carrying off the Indians from Maroco" (*Id.*, 183). In May, 1769, "the Spaniards had come through Pomeroon . . . and were kidnapping the Indians. . . . As for the Caribs, they are, it seems, abandoning their land Barima" (*Id.*, 188). "The unexpected invasion of the Spaniards . . . calls for your Lordships' most serious consideration . . . Your Lordship's Post at Maroco has been entirely ruined, all the Indians who still remained having fled, and none now remaining round or near the Post" (*Id.*, 190).

In 1769 "the Spaniards in Barima, having been reinforced by another boat, had at last attacked the Caraibans themselves, captured several of the same, carried them off, burnt their houses and ruined their plantations" (*Id.*, 191).

Passages like the above might be multiplied. All of them rest upon Dutch testimony.

Another necessary requirement of this exclusive political control, which the Tribunal are given a discretion to regard as the equivalent of actual adverse possession, would seem to be that, as the territory was at the time claimed by Spain, the acts and verbal intercourse upon which the transfer of dominion is rested should either have been expressly notified to Spain or of such a public character that she would be charged with notice of them.

Surely, it will not be contended that secret intercourse, or intercourse of such a nature that only the parties to it would have knowledge, can be treated as an exclusive political control.

One of the requirements of a good prescription or adverse occupation is publicity or notoriety. The nation against whose claim a title is set up must have had notice or be chargeable with notice of the adverse occupation. It must follow, therefore, that every act of intercourse between the Dutch and the Indians, that was of a character unlikely to be known except to the parties to it, must be put out of consideration in determining this question.

An occasional procedure before a Dutch magistrate, or an occasional visit of a Dutch Postholder to the Indians, or of an Indian

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chief to the Postholder, cannot be made the basis of a claim that the Dutch were exercising exclusive political control.

Here the relation, such as it was, between the Dutch and the Indians was studiously concealed from the Spaniards, by the Company's orders to bring about certain acts of the Caribs but "without openly appearing therein."

So, too, political control must be continuous and uninterrupted.

In the case here presented there is no pretence of a written treaty. The results claimed are derived solely from a suggestion of acts or a course of dealing between the Dutch and the Indians. We think it is clear that during the period of the Dutch occupation the Indians never accepted the Dutch as their masters. Individuals of the tribes located themselves in the settlements and took employments from the Dutch, but the tribes never at any time understood that the presents given to them by the Dutch were symbols of Dutch control and of a surrender of their tribal authority; nor were they so intended.

Some of the incidents that appear in the case give positive evidence that the Indians understood their relations with the Dutch to be those of mere friendliness, of which the presents bestowed were evidence, and of agreements to unite in acts of hostility against the Spaniards. In the whole course of the Dutch intercourse with the Indians, we think we may safely say that there was no case in which the Dutch controlled or attempted to control the Indians as subjects. That this was the relation of the colony to the Indians, distinctly appears from the despatch of Governor Carmichael, January 18, 1813, inclosing a letter from "the Protector of the Indians," who said (B. C. V, 203-4) that he had been in the habit of calling "for the assistance of the Indians at different periods since the year 1795, during which space of time I know of no Treaty or Agreement with the Chiefs of Indian tribes implying anything of the nature of subsidy or tribute."

It seems from the Governor's letter that the Chief of the

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Caribs had come not long before with 300 savages, with "rather strong language and insolent demands;" that on another occasion "five chiefs of the Arrowauks, with their followers, had come with threats." The "Protector" said: "It was not, I believe, thought expedient to repulse them suddenly." So they were told that presents would be sent for from England.

It remains to examine the facts which are alleged by the British Case in support of the theory that relations with the Indians in the disputed territory amounted to "general control of its inhabitants, under the protection and by the authority of a Government claiming and exercising jurisdiction in that behalf."

From the marginal titles borne by these paragraphs of the British Case, they would seem to be very important matters, such as "Maintenance of the Peace," "Protection of Indians," "Jurisdiction over Indians," "Appointment of Indian Captains," "Military Services," and the like. The titles, however, are far away from the evidence to which they relate. The first of these is "Maintenance of the Peace" (B. C., p. 84). "Maintenance of the peace" is a very important feature of police control. None perhaps can be said to be more important in any civilized country. As an evidence of political control, maintenance of the peace, where it exists, is a fact of great importance. "Maintenance of the peace," however, as used in the British Case, does not refer to this familiar exercise of the police power. It means the maintenance of peace between Indian tribes.

These instances are sufficiently dealt with in the Venezuelan Counter-Case, and the comments there made need not be repeated here. Four instances are mentioned, in a period of one hundred and sixty-six years, to prove the fact that during this period the Dutch maintained peace between the Indian tribes. In two of these instances efforts were made to bring about a peace, but the Indians refused to listen to them. In the third case, which was in Essequibo itself, the Dutch commanding officer was ordered "not to interfere directly or indirectly in the quarrels of the In-

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dians." This is the evidence in support of the proposition. In opposition to it one conspicuous fact stands out, not as a thing which finds more or less imperfect illustration in four occasions in a century and a half, but as a thing which was illustrated probably every year in the history of the colony, for it was connected with a practice than which none was more charactertistic or persistent a feature of the colonial history of Essequibo. This was the trade in "poitos," or Indian slaves.

The manner of obtaining these slaves was very simple; it was by inducing the Indians near the Essequibo to make war on the Indians a little further off and, as an incident of the war, to capture their women and children, who were then bought by the Dutch. This was a form of trade which had many incidental advantages. It was one way in which the adjacent Indians were enabled to profit by their relations with the Dutch, and had a large influence in bringing about that community of interest which was the dominant factor in the friendly relations between the colonists and the natives. Of course, a community of interest is not control, and presents no elements of control. It explains much, however, in the relations with the natives. It gave an outlet to the martial spirit of the Caribs, which otherwise might have expended itself upon the Dutch. It lent an additional zest to their favorite occupation of making war, because they always got an immediate and solid return for the spoils which they brought back. Finally, it was advantageous in developing a hostile spirit towards the Spaniards, as the Spaniards were opposed to this slave trade.

Thus, Storm in 1746 reported (B. C. II, 46) that a fort had been erected by the Spaniards up in the Cuyuni and that they were thinking of founding another, "whereat the inhabitants are very much aggrieved, and the Carib Indians a great deal more so, since it perfectly closes the slave traffic in that direction from which alone that nation derive their livelihood."

This one sentence of the Commandeur throws a curious side

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light on the British claim that the Dutch were the maintainers of peace among the Indians.

It is quite possible that the Spanish authorities of the eighteenth century were not in all respects model rulers either of civilized or uncivilized peoples. They have been charged, rightly or wrongly, with an arbitrary mode of exercising power, with cruelty, and with other reprehensible qualities. But one thing they certainly did: they attempted to bring the Indians into a condition approaching that of the civilized races, to train them in agriculture and in useful arts, and to gather them into communities, where they should become peaceful and industrious. The effects of this civilizing are repeatedly testified to by British officials who came in contact with them.

The Dutch, on the other hand, never attempted Indian civilization at all. Their control over the Indians was by means of gifts, by the distribution of ardent spirits, by petty intrigues with one tribe or another, by inciting attacks upon the Spaniards, as in 1750, by the direct orders of the West India Company, and lastly, by the community of interest which they established in reference to the trade in Indian slaves. To call them peacemakers betrays a most extraordinary ignorance of their relations with the Indians. Their whole system of slave-trading was based on making war, for without war not one Indian slave could have been procured. The only way in which an Indian entered into the status of slavery was by hostile capture. Being brought as a prisoner of war to the Dutch, they took him clothed with this status. They never reduced any Indians to slavery themselves. This would have involved them in war, because war was a prerequisite to changing a free man into a slave; but they induced the Indians to do it for them.

Nothwithstanding what has been claimed for them, the Dutch authorities were unable, even when it was for their interest, to restrain the warlike spirit of the tribes, or to maintain peace between the tribes themselves.

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In 1679 Commandeur Beekman informed the Company of tidings of the approach of a strong fleet of Caribs from the Corentin, with intent to make an attack on Essequibo and Pomeroon, in connection with the Caribs there. The Commandeur rendered thanks to a good Providence that they had escaped (V. C. II, 38).

In 1680, in another letter to the Company, he told of the reported poisoning by the Accaways of one of his agents, and that his voyagers were in such fear that they refused to go among the Accaways. He said that he would bethink himself of "means for conciliating that tribe" (V. C. II, 41).

In 1684 he reported to the Company that the Caribs had set upon Gabriel Biscop, who had come from Surinam to trade in Barima, killed him and fifteen of his men, destroyed his bark, and made threats that they would come with the French and lay waste to the Dutch plantations and fort at Essequibo. To guard against this he proposed to erect a fort on the island of New Walcheren (V. C. II, 47).

In 1685 he said that the Caribs about Barima, Waini and Amakuru alarmed the coast and slew the Arawaks and the Christians.

In 1750 Commandeur Storm reprobated the imprudence of the colonists in trading arms to the Caribs for slaves, and suggested that thereby they put themselves into the hands of that warlike nation and gave them weapons which they might use for the destruction of the Dutch (V. C. II, 106).

In August, 1755, the Director-General wrote (B. C. II, 120):

"The nation of the Acuways, which is very strong in the interior, and some of whose villages both in Essequibo and in Massaruni and Demerary are *situated next to our plantations,* commenced by attacking the dwellings of some free creoles belonging to the plantation Oosterbeek, and massacring those they found there. Thereupon they spread themselves and caused terror everywhere. Most of the planters living in Massaruni retired to an island with their slaves and their most valuable goods, and none of them dared to stay at night on their plantations. A few days after that the aforesaid Acuways attacked the plantation of a certain Pieter Marchal (who according to general report, is the chief cause of this revolt) at half

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past five in the morning, killing two of his people and wounding five, most of whom have since died."

He continued that he had been "requested to send an invitation to the Carib Indians to take the field against the Acuways," but that there were many difficulties in the way of this, among which was that "they will come several hundred strong and begin by asking for bread and other provisions, of which we have none." He said that he "sent several orders" to Aruwaks to come to him, as he wished to send them to the Acuways, "to try and establish peace," but that "these Indians have immediately vanished."

In 1756 Storm said:

"As peace has not yet been made with the Accoways of Mazaruni and Essequibo, I am obliged to leave the garrison at the old fort, and cannot yet imagine how this matter will turn out" (V. C. II, 121).

That the colony lived in continual fear of the Indians is shown by the Director-General's letter of April 9, 1768, in which he said that

"The desertion of a serjeant and a few men would (especially in time of peace) be scarcely noticed in Europe, but here it is an entirely different matter, our colonies here on the coast having on the one side *restless neighbors* who cannot long remain still, and on the other side the Spaniards" (V. C. II, 175-6).

Now as to the maintenance of peace between the tribes.

In 1680 the Commandeur told of his fruitless efforts to prevent war between the Caribs and the Accaways; that they refused to yield to his requests, and he was compelled to allow the war to go on, notwithstanding it closed the "river Cuyuni, our provision chamber" (V. C. II, 41).

The Indians threatened, if they were interfered with, to depart in great numbers to Barima and elsewhere, and the meaning of the threat was disclosed by Beekman's letter of January 8, 1683, where he said (V. C. II, 44), in speaking of the obstinacy of the Indians, who, when offered wares and other inducements to do anything, "meet you with the tart answer that they can get plenty of these by trade in Barima and other places, which partly

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squares with the truth, on account of the trade which the French from the islands carry on there."

In the following month, he told of having sent a negro up in Cuyuni, "in order, if it be possible, to make peace between the Accoways and the Caribs, so as by this means to get the wild-hog hunting there" (V. C. II, 44).

Thus, he had been trying for three years, without success, to put an end to this war.

In 1686 the chief of the Caribs in Massaruni sent word to the Dutch authorities that disturbances had broken out in that river, and that the supply of dye would consequently be short. The British Case, in citing this as an instance of maintenance of peace by the Dutch, says (p. 85):

"Upon this occasion also the Commandeur used his influence to prevent a continuance of disorder."

The fact was, as shown by the evidence, that Makourawacke wished to go to war, and the Commandeur sent to dissuade him from it.

The report went on to say (B. C. I, 202):

"This the aforenamed Makourawacke would not comply with, and this is the chief and most principal cause of this misfortune, which now falls upon the innocent."

Here the evidence cited proves exactly the contrary of that for the purpose of which it was cited.

In 1750 the Director-General reported (B. C. II, 64) that one Jan Stok, a trader in upper Essequibo, in company with a band of "Orinoco Caribs," had "attacked the nations our friends close by the Post Arinda, caused all the men to be killed," and carried away women and children, besides committing other enormities.

Steps were ordered looking to the apprehension of Stok, but the Case contains no further mention of him. The Director-General, however, recommended (*id.*, p. 65) that

"to obviate all further misfortunes (for a war with the natives would be the ruin of the Colony), . . . that your Honours should be pleased to

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prohibit until further orders traffic with the Indians on the Rivers Essequibo, Massaruni and Cuyuni."

In 1746, as has already been shown, Commandeur Storm (B. C. II, 46) had hinted to the Company that the Caribs were ready to attack the Spanish missions, but that he feared that "such a step would certainly be revenged upon us by the Spaniards."

In the next year the Company replied (B. C. II, 51), in their famous letter of September 9, 1747:

"If in the meantime you can, by indirect means and without yourself appearing therein, bring it about that the Spaniards be dislodged from the forts and buildings which, according to your assertions, they have made upon the territory of the Company, and can prevent them from spreading further in that quarter, you will do well to accomplish this."

This was almost immediately followed by the attack on the Spanish missions in 1750.

In 1757, however, the Essequibo authorities were even afraid to assert themselves in this covert and indirect manner, and when the Caribs in Cuyuni asked for powder and shot to make a raid upon the Spanish settlements, the request was refused, and the Director-General was asked "to give information of this rumor" to the Commandant of Guayana, "in order to avert all suspicions which the Spaniards might form with regard to this Colony." The Dutch authorities were here attempting to get credit with the Spaniards for not doing that which a few years before they successfully though covertly done. (B. C. II, 131).

In 1765 Storm reported (V. C. II, 160) that he had received tidings from the upper Massaruni that the Caribs were at war with the Accaways, and that the latter had massacred all the women and children in a Caraiban village. His comment upon it is:

"Not without reason did I fear that we should again be mixed up in this as we were a few years ago, especially through the indiscretion of some itinerant traders and avaricious settlers, who, without taking any heed of the consequences, allow themselves to be drawn into these quarrels upon the slightest inducement of profit, supporting one or other of the parties

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either with arms or with advice, which being discovered by the other side always leads to fatal results, and might be of great danger to the Colony itself."

There is evidently no thought here on the part of the Dutch Commandeur of taking any part in the quarrel then in progress. All that he does, apparently, is to give the situation a passing mention. He not only does nothing to put a stop to the war, but he leaves his Commandant instructions, in case the danger of the settlers requires it, to send soldiers up the river "to give the commanding subaltern strict orders to act simply on the defensive, and not to interfere directly or indirectly in the quarrels of the Indians" (B. C. III, 120).

This is another of the instances cited by the British Case in support of its theory that the Dutch "maintained peace" between the Indian tribes.

In view of the above, it is a wide departure from the facts to assert that the Dutch as a practice maintained peace between the Indian tribes.

Again, in 1768, the Director-General reported (B. C. III, 165) that there was again war between the Accaways and the Caribs in Demerara and Berbice. He said:

"The former nation is thus in continual fear of being unexpectedly attacked by the Caribs, which is certain to happen even if it should be after the lapse of a year. I have written the Commandeur to earnestly warn all the citizens and his soldiers that when this occurs they are not to interfere, directly or indirectly, except to make peace if possible, and especially are they to take care not to provide either party with arms or otherwise to assist them, since such action might bring the other party upon us and have fatal results."

The Director-General was not exercising a very severe control over these tribes, and it is to be remembered that these were tribes living within the boundaries of the Dutch settlements about Demerara. He did not dare to interpose Dutch control even here, for fear of the consequences to his own settlement.

A second class of acts referred to in the British Case as illus-

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trating the control of the Dutch (p. 85) over the Indians is denominated "Protection of Indians."

Two instances are cited, and but two, in which it was exercised. One is the fact that "in 1645 the Zeeland Chamber formally referred to the Council of Nineteen a report made by the Commandeur of Essequibo on the subject of the kidnapping of Indians in that neighbourhood." The second is that "in 1686 the enslaving of Indians *by Dutch subjects* was made illegal, and only those Indians might be bought as slaves who were in slavery to the Indians with whom the trade was carried on."

The first of these instances occurred in 1645, when the Dutch were still only in the relation of military occupants of Essequibo, during a war between them and Spain. The Commandeur had reported that a Dutchman had kidnapped some Indians, and the Zeeland Chamber referred the letter to the Council of Nineteen, where, for all that the evidence in this case shows, it may have remained until the Council of Nineteen was abolished.

The second instance refers to the period under consideration. No authority is cited for the existence of the law referred to, nor is any such law mentioned in the evidence. It is said to be an instance of protection of the Indians. In what does this protection consist? In making illegal the enslaving of Indians by Dutch subjects, and in confining purchases of slaves to those who were in slavery to the Indians with whom the trade was carried on.

Having thus allayed all doubts as to moral responsibility for Indian slavery, by providing that the Dutch should not make slaves, but that the Indians should make slaves and the Dutch buy them, the Company for a series of years, and the Dutch colonists during a considerable part of the period, got the benefit of the traffic.

As there is no evidence of any such law, and as its provisions are unknown, it is idle to speculate upon their effect.

It is contended that this law "protected from slavery all the

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tribes that inhabited the territory now in dispute, as the Indians of that territory did not enslave one another, but treated as slave nations only certain tribes further in the interior;" the intimation being that the Indians of the disputed territory were protected but the other tribes were not. This theory that the slaves were not taken from the disputed territory is entirely incorrect. It is directly contradicted by the one man who was able to contradict it authoritatively, namely, the Commandeur of Essequibo. In a report of March 26, 1694, he states (B. C. I, 212) that "most of the red slaves come from the rivers Barima and Orinoco, which lies under the dominion of the Spaniard."

Some of the instances of "protection," however, that are not cited by the British Case may properly be referred to, as showing that when it came to "protecting" the "protected" Indians against others, the Dutch authorities were quite unwilling to do anything.

In 1748 the Director-General wrote to the Company (V. C. II, 102), of the ill-treatment of Indians by Spaniards, and added:

"I intend to tell the chiefs of the Indians, when they come to me, that I can provide no redress for them, and that they must take measures for their own security."

This letter discloses the fact that the Spaniards were using force against the Indians, and that the Dutch not only failed to respond to any duty of a sovereign, but to perform that of an ally, in return for the aid which they had received.

The Director-General not only left the Indians to protect themselves, but took great care to disclaim any responsibility for the acts done by them in their own defence. He not only failed to protect his "subjects," but he repudiated their acts, when they were the result of his own intrigues, and would not allow that they were done under Dutch authority.

Thus, in October, 1754, the Director-General reported (V. C. II, 114-5), that the Caribs, angered against the Spanish missions for interference with the slave trade, had made an alliance with

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the Panacays, and had attacked the Spanish mission in the Cuyuni and had massacred its inhabitants. He had received information that a Dutch colonist had been nearby when this was done; and fearing that the presence of a Dutchman there would involve Dutch responsibility for the Indian attack, he caused the man "to be apprehended and brought to the fort. Because such a matter would be of consequence, and would afford the Spaniards real and well-founded reasons for complaint, I have always taken punctilious care therefor." "However," he adds, "this sad accident for the Spaniards has covered us on that side, so that we have nothing to fear from that direction."

In connection with this statement must be read that of Storm which has just been cited in his report of a few years before (B. C. II, 58):

"I intend to tell the chiefs of the Indians, when they come to me, that I can provide no redress for them, and *that they must take measures for their own security. Then I feel assured that in a short time no Spaniard will be visible any more above in Cuyuni.*"

What paltry cunning and cowardice this was if the Dutch Colonial Government occupied the relation of sovereign to these Indians! It failed to protect them; it put them upon their own defence; it incited them to make attacks against the Spaniards; and when they acted, it apprehended a Dutchman whose presence in the neighborhood might have been construed to lend countenance. And in the same breath the Director-General cannot fail to congratulate himself that these acts, the responsibility for which he laid falsely upon the Indians, had directly and largely contributed to the security of the Dutch settlements.

But it was a game that even the untutored savage did not fail presently to understand, as we find in the report of the Director-General of September 9, 1758 (B. C. II, 143). The Spaniards had made their expedition down the Cuyuni, attacked the Dutch post and carried off the occupants. There was a strong cry now for help from the Caribs; but it does not seem to have been forth-

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coming, for the Director-General, in the last paragraph of his letter (p. 144), said:

"As soon as my people have returned, and I am in receipt of reliable information, I will send some one to Orinoco to ask for the reason of this behaviour and to demand satisfaction. It would not be very difficult for me, by making use of the Caribs, to pay them back in their own coin and drive them from their present position. But since the Indians are unwilling to go without having some white men at their head, and since the arms and supplies of such an expedition would cost a great deal, I shall not think of it without having received express authority."

The Caribs did not intend again to be thrust forward to make an attack upon the Spaniards while the Dutch withheld themselves with a view of escaping Spanish wrath. They would not go again "without having some white men at their head." If Dutch work was to be done, it must be done as such. The Dutch ally must have a representative in person with the expedition.

In August, 1761 (B. C. II, 201), the Director-General reported another Spanish force in Cuyuni; that "a party of Spaniards and *Spanish Indians*" had been "down to the lowest fall, where your Lordships' indigo plantation is situated, driving all the Indians thence." The Indians complained, but no aid was sent to them. The Director-General continued: "I fear that bloodshed and murder will come of this, because, if they come below the fall the inhabitants will surely shoot upon them, and not allow them to approach, and what will the consequences of that be?" There was no help here for the Indian; Dutch shooting would not begin until the Spaniards had passed the lowest fall.

Finally, it became necessary that the Dutch should give distinct assurance to the Indians that they would discharge their duty as ally and take part with them. This was necessary in order to secure the aid of the Indians to restore the post on the Cuyuni; and when the West India Company were advised of this, they answered, in a letter of September 19, 1765 (V. C. II, 162):

"We are entirely of your opinion that it is of the greatest necessity to restore the post in Cuyuni, and in consequence we were very much

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pleased to learn that you had at last succeeded in getting Indians to give a helping hand in that work, on condition that assurance should be given them of protection against the Spaniards. THIS it WAS EASY TO PROMISE."

Certainly the "protection" of the Dutch Commandeur was paralleled by that of the West India Company. It was easy to promise; a promise that was never fulfilled, and that was made with no intention of fulfillment. The protection apparently never existed otherwise than as a basis for future claims.

In January, 1772, the Director-General reported (B. C. IV, 101) that the attacks of the Spaniards had driven the natives away from Moruka; that "the Spaniards even came to the Post, . . . sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so."

The Dutch were not even able to protect the Indians at the very post, which it was contended controlled the whole of Barima, from the assertion of Spanish dominion and control over them; in fact there was no measure adopted for the protection of the Indians until the order of the British Government, after Schomburgk's report in 1839-40, and that order was not based upon any duty of a protectorate or of a control already acquired, but contemplated a boundary to be established on the basis of civilized occupation and settlement.

The Spanish authorities took a different view of their obligations; all the Indians to the falls of the Cuyuni they regarded as subject to their dominion, by reason of their first occupation of the territory. Their rebellious subjects they punished and held in check; their peaceful and orderly subjects they protected. In a letter of the King of Spain to Don Joseph Solano, June 4, 1771 (B. C. IV, 86), it is said:

"The King has been advised of this, as also of the great advantages arising from the new settlements, you being able by means of them to hold the Dutch in Essequibo within their legitimate possessions, and to free the other tribes from the hostilities of the Caribs."

The British Case having claimed some little practice of protection of Indians, interweaves with this subject and introduces

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as a branch of it, another subject, which is called "Jurisdiction over Dutch Settlers." One would think at the outset that jurisdiction over Dutch settlers was not a ground for the assertion of control over anybody else; but, according to the British Case (p. 85), it comes about in this way:

"The necessity of protecting the Indians from strangers and from one another gave rise to the exercise of regular jurisdiction by judicial Tribunals, which the Indians themselves became ready to invoke."

In illustration of this the Case cites four instances where Dutch colonists were called to account for ill-treatment of Indians.

That Dutch settlers occasionally ill-treated the Indians, that the Indians complained of it, and that the settlers were punished in consequence, does not show a protection of the Indians on which any political claims of jurisdiction over Indians can be founded. The jurisdiction of the Dutch authorities over its colonists was a personal jurisdiction. The Dutch Courts of course asserted a right to punish the subjects of their own nation for acts against its laws. Still more were such offences cognizable when they put in peril the safety of the colony. This jurisdiction is one familiarly recognized by the courts. If the jurisdiction asserted had been a territorial jurisdiction, it would of course have embraced all those domiciled or being within the district. It would have embraced the French, the English, and the Spanish who might come into the territory now claimed as having been Dutch.

They all did come, and they came in great numbers; but a Dutch jurisdiction over them never was asserted, nor was there ever any attempt to apprehend them upon any criminal process.

A brief examination of the cases referred to will show that the claim of control under this head is destitute of foundation.

The first of them was that of Maillard, a colonist who had abducted an Indian girl, upon a forged order from the Dutch Governor, in 1748. He was ordered to return the girl to her father; and not respecting the order, was summoned. We have here a case of Dutch jurisdiction over a Dutch subject for an

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offence against Dutch authority. Moreover, the Indian is described as "belonging to the Company's trading place in Moruca," and the *locus* of the offence seems to have been the Moruca post (B. C. II, 56).

In 1750, Marchal and Bakker (B. C. II, 64), both Dutch colonists, were accused by Indians of not paying for services rendered. They were reprimanded and ordered to pay the Indians their dues. This was an ordinary exercise of personal jurisdiction.

The case of Tonsel (B. C. II, 72) was also that of a Dutch colonist, who was charged with taking away the children of some Caribs as pledges for debt, and with having stolen a slave from another Dutch colonist. Here we have a double offence by a Dutch colonist, against Indians and against a fellow-colonist. The first put in peril the Dutch relations with the Indians, and both were offences against Dutch law, committed by a Dutch subject.

Maillard seems to have been a confirmed offender, for again, in April, 1785, it was reported (B. C. II, 104) that complaints had been received from the upper Essequibo that he had killed two Akawois there. He was summoned, with certain negroes as witnesses. It seems that Maillard had adopted an extraordinary remedy for the collection of a debt. He had placed a pistol at the breast of an Indian, and said: "You must and you can pay me; there are Akawois; kill them;" and that thereupon Maillard's people killed two Indians, an Akawois and an Arawak. Maillard acknowledged placing the pistol at the Indian's breast, and that the Indians had been killed in his presence, but denied that he had any part in the killing.

The conclusion reached at this point was (*Id.* 105) "that the Indians must frequently tell falsehoods for the whites who trade in the Upper Essequibo, and commit many extravagances," and it was "unanimously resolved, in order to prevent all these disorders, which would be very prejudicial to the Colony, to discontinue this trade in the Upper Essequibo," and to send for the Indians implicated,

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in order "to examine the case as far as practicable, and then to make such arrangements and fix such orders as will be found necessary." There is no record in the Case of any further proceeding in this matter.

Here, again, we have a Dutch colonist charged with offences against the Indians, leading to disorders prejudicial to the colony. The jurisdiction exercised was that over a Dutch subject. Nor is it clear that the *locus* of the crime was within the disputed territory.

In 1760 Nicolas Stedevelt was arraigned (B. C. II, 182), because he, "without giving any notice, had gone to the Upper Cuyuni, and, making a frivolous use of his Excellency's name, had not only ill-used the free Caribs, but also bound and put them in irons, and taken a woman away." The defendant said that he was prompted to do so to recoup himself for robberies committed by Caribs who had stolen all his goods. The judgment was contained in this very significant resolution:

"That as Nicolas Stedevelt never had any authority to act in such a manner, and as only lately a Law was published prohibiting such proceedings, the Court hereby condemns Nicolas Stedevelt to pay a fine of 250 guilders, cautioning him at the same time that should he not be more prudent for the future, he will be banished from the land."

Here the offence was against the Dutch law by a Dutch citizen —a law having for its object the repression of offences by the colonists against the Indians. It appeared by the testimony that the Carib whom he had put in irons had stolen Stedevelt's goods, but this offence of the Indian was not prosecuted.

Very similar is the case of Pieterszen, in 1783 (B. C. V, 6), an inhabitant of Essequibo, who was accused of killing an Indian, arrested, tried and declared innocent.

This, again, is the case of a Dutch colonist, and the place of the crime seems to have been about the Dutch settlements, and not in the territory occupied by the tribes.

It is further contended by the British Case (p. 86) that a juris-

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diction was exercised over the Indians themselves. It is not claimed that any civil jurisdiction was so exercised, and it is admitted that such criminal jurisdiction as is claimed was "only in the case of the more important crimes." The British Case refers to exactly three instances, occurring in a period of one hundred and sixty-six years.

The first of these was closely connected with the case of Marchal above mentioned, where certain Akawois had been murdered by Caribs in 1755. Marchal was to be tried for instigating the murder, and the Carib was wanted as a witness. The British Case (p. 86) thus describes what happened:

"The Council summoned before the Court a Carib Chief from Barima, who had killed certain Akawois in the Massaruni district, and as it appeared that he had acted at the instigation of a colonist, the latter was put on his trial."

This statement is quite inaccurate. The Carib was not "summoned," as the Case states; nor was he summoned to answer for the crime, as the Case would seem to imply. The Council sent a man "to *invite* hither the Chief of the Caribs who murdered the Accuways in Masaruni, to be present at the Session for January next, that we may learn from the same who have been the causers and inciters thereof."

There was no thought here of proceeding against the Carib. There was no summons. It was an *invitation*, and an invitation simply to be present as a witness.

In January, 1756, the Owl appeared and was interrogated. He said (B. C. II, 123–4) that:

"He had committed the murder solely upon the advice and persuasion of the person Pieter Marichal . . . who had told him that if he did not murder the Acuways, the letter would murder him and his people in order to avenge their friends killed some time before, and when he, the summoned one, had thereupon replied that such had been strictly forbidden him by the Commandeur of this Colony, the aforesaid Marichal had encouraged him, and continued to say that he would be answerable for it by writing a letter to

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his Excellency (who, moreover, could not judge who were friends or enemies), that he, Marichal had sent Caribs to his help, and for which he, the Owl, had, after the slaughter had been committed, presented Marichal with one of the captured slaves in recognition of that advice."

Marchal threw himself upon his dignity, and refused to be heard "solely upon the accusations of a single Carib, he appealing to Christian witnesses who had heard the contrary out of the mouth of the aforesaid Owl himself." The judgment was "to let this matter remain in *statu quo*."

The Director-General reported that because of the untrustworthiness of Indian testimony (B. C. II, 125) "Marchal was declared innocent of the charges, although I, and many with me, think him really guilty."

Here was a case of the murder of Indians, undoubtedly committed by another Indian. The proceedings were against a Dutch colonist for an offence against the peace and safety of the colony, and nothing could more fully demonstrate that the Dutch were not claiming jurisdiction over the Indians than the fact that this Carib Owl, in the presence of the Court, admitted the killing, and that no process whatever was taken against him for it. He was allowed to go free and left to answer to the Indian law of blood revenge. The colonist was also allowed to go free, and nobody was punished for the murder.

The second case referred to was reported by the Director-General in 1765, but is not very clearly stated. The first information we have of this case (B. C. III, 121) is contained in a report made in the previous August, in which the Director-General said:

"I was obliged to send the Postholder of Moruka away from here very quickly, because the Indians of Pomeroon came to the fort to report that some canoes filled with Spaniards were in the Pomeroon, and because a letter came from his assistant informing us that some murdered Indians had been found in the itaboes. I charged him to go and inquire into these matters as speedily as possible, and, if necessary, to immediately send to Mr. Bakker, who would then send him assistance."

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In his letter of December (B. C. III, 126), the Director-General said:

"The reason why the Postholder of Moruka had to depart from here so suddenly . . . was a rumor that he had caused a murder among the Indians, the assistant thinking that certain Spaniards had had a hand therein. This was found to be otherwise, the act having been committed by Indians themselves. One of the murderers, brought here and imprisoned, has killed himself before being brought to trial, wherein he would probably have been acquitted, and his corpse has been hung on the gallows for the satisfaction of the deceased's friends. The principal one has not been apprehended, and I have told the complainants that *they must themselves apprehend him* and bring him here, in which case he should receive his well-deserved punishment."

This is rather a cloudy statement of the case. It seems that it was supposed that the Postholder had caused the murder, and again that the Spaniards had committed it. The place of the crime is not fixed; but it must have been at or very near the Moruca post, so near that the Postholder was suspected of having caused the death of the Indians. This is confirmed by the place where the bodies were found. From the statements, it seems probable that the Indian who was arrested for the murder belonged to the neighborhood of the post. He is reported to have been innocent; nevertheless, for the appeasement of the savages, the body of this innocent man was hung on the gallows. The Indian who was the real culprit, and who had escaped from the neighborhood of the post, was not pursued by the Dutch. The Indians were told that if *they* would find and bring him in the Dutch would deal with him. But nothing further appears to have been done in the matter. The case would really appear to be nothing more than an unsuccessful attempt to exercise jurisdiction in the immediate vicinity of the post, in a region that was not constructively, but actually, occupied by the Dutch.

The third case referred to is that of the Indian Joris, against whom proceedings were had, March 5, 1783 (B. C. V, 7–11), for killing a colonist named Mullert. The Indian is described as

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"formerly residing on plantation Engelrust, in this river, and formerly at Fort Zeelandia." On the trial he is described as "living in the Creek Wakkapou." (B. C. V, 9.) In the Memorial of the Deputy Fiscal it is said that he "was living at Supename." In his evidence he said that he met Mullert "paddling up the Creek of Wakkapoe" (*Id.*, p. 10), and that he shot him there. He justified his act by saying that he had been assaulted and his goods taken from him by the deceased. He was tried, found guilty and sentenced to a whipping and hard labor for life. (*Id.*, p. 9.)

In this case it appears, first, that the *locus* of the crime was within the post of Moruka; second, that it was a crime committed on a Dutch colonist; third, that the Indian was an Indian who had settled at a Dutch post; and it would appear from his reference to the goods that he had gone out from the post to trade; moreover, his residence had been at different points, and perhaps was then at some point in the thickly settled part of the Dutch colony. He was, therefore, to all intents and purposes, as much a subject of Dutch law as the Dutchmen themselves, especially in reference to a crime committed within the limits of the colony.

These three cases are all that are mentioned by the British Case as instances of the exercise of Dutch jurisdiction over Indians, and they are all that are disclosed by the evidence. The fact that they are all, occurring in one hundred and sixty-six years, that can be cited in the British Case, absolutely contradicts the suggestion of any Dutch jurisdiction, civil or criminal, for large or small crimes, over the Indians in the disputed territory.

The British Case also refers (pp. 90–1) to the so-called "Appointment of Indian Chiefs." Most of the matters referred to under this head are too trifling to require an answer.

The first (B. C. I, 200) is a statement made by De Jonge, Commandeur of the second Pomeroon colony, to the Company, asking that they "send me five or six red coats and breeches, with some sham gold and silver lace, to keep on friendly terms with the

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Chiefs of the Indians." Singularly enough, the British Case refers to this as an evidence of political control. This was in 1686.

The next reference to the subject is in 1765, nearly a century later. This is a statement of the Director-General (B. C. III, 126) that he has received "the ring collars for the Indian Chiefs; they are very pretty; too pretty, in fact, and too heavy for Indians."

The third (B. C. IV, 136) relates to the return of the ring-collars, in order to have them made into "canes with silver knobs."

The fourth references describe the distribution, in 1778 (B. C. IV, 187) of ribbons, looking-glasses, axes, &c., to various chiefs "as a token of friendship," and that "the hats and sticks were given to the Chiefs as a token that they are recognized as such by the Government." (B. C. IV, 188.)

In the following year, 1779, other presents were given, and "commissions as Captains or Owls of their nation were also given to Indians" (B. C. IV, 207), who were doubtless ready to take anything that the Dutch saw fit to give, whether it was a ribbon, a looking-glass, a cane, or piece of paper.

Finally, the last reference (B. C. V, 26) is not a reference to anything that was done, but to a proposed action on the part of the Company, in which, in case the Indians promised to give assistance when called upon, the arrangement should be accompanied "by some presents to the Chiefs or Owls, and particularly a cane with a silver knob, bearing the arms or the monogram of the Company, or something of that sort, and a dozen ring collars of silver with the Company's arms or monogram, and by rum."

The above facts are regarded by the British Case (p. 91), as justifying the statement that

> "The Chiefs of the Indian tribes thus became formally accredited officers of the Dutch Colony, and exercised their authority with the sanction of the West India Company."

This statement hardly seems to require an answer.

The same may be said of what the British Case calls "The Dutch Subsidy," meaning thereby presents to the Indians. We

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are not going extensively into a discussion of this subject. It is enough to refer to a single instance mentioned by the British Case, where the chiefs were summoned "in March, 1778, to Fort Zeelandia and entertained there." This was the occasion on which the chiefs were given their hats and sticks "as a token that they are recognized as such by the Government." The nature of this proceeding is disclosed by a letter from the Manager of the Duynenberg Estates (B. C. IV, 188), in which he said that orders had been given to the Postholders and Interpreters and those in communication with the different nations that they should attend at the Fortress of Zeelandia,

"that a joeling (revel), or festival as it is called, might be given them, and presents distributed to them from your Honours." "Some of them have attended and received their revels and presents with protestations of the greatest friendship. . . . having regard to the great profit which, in the interest of your Honours (as I hope), the land stood to reap therefrom, I did not dare to hesitate, requesting that your Honours will be good enough to approve favorably of my conduct,—and, at the same time, cause to be given your Honours' orders how the Keltum used by me for this festivity . . . shall be accounted for."

The account for the "*keltum*" is given in B. C. VII, 182:

"1778. From plantation Duynenburg:
August 8. To the Indians in their revels, by order of the Director-General..... 176 gallons."

With such a supply as this of "*keltum*" to facilitate negotiations, it would not be remarkable if the Indians had consented to anything; and it certainly justified on their part "protestations of the greatest friendship."

This act bears strong indications of a deliberate and systematic purpose to debauch the Indians by wholesale, and its natural result is to be found in steadily diminishing numbers of the tribesmen.

In 1784 the Company devised an elaborate plan (referred to in the British Case, p. 91) for distributing grants of land to the Indians. There is no evidence that this was ever carried out. All

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that can be found is that the Indians assisted the colonists in their wars with the revolting slaves, and that they came to the posts to get presents whenever they were distributed.

It is a singular fact that the British Case apparently takes the view that the receiving of presents is an indication of servitude. If the giving of a subsidy is obligatory, the servitude is on the other side. Tributary States or peoples are those who *pay* tribute, not those to whom tribute is *paid;* and it was in view of this fact that Governor Codd, in a passage already quoted, in 1813, said of the Dutch-British colonies that they were "tributaries" to the Indians.

All the other acts which are referred to by the British Case in reference to employment of Indians, in the recapture of slaves, to the military services rendered by Indians, and to the industrial employment of Indians, are simply reducible to a mere question of rendering services for pay. Thus, it is stated (p. 92), that "it was customary to pay rewards for each slave recaptured." Of course, the Indians, under these circumstances, were ready to undertake the recapture of fugitives.

In October, 1785 (B. C. V, 38), the Director-General, speaking of the parties he had sent out into the forest to recapture runaway slaves, said:

> "These Commandos cost certainly much, through the manifold presents which we must (give) to the Indians, without which they will not move a step, and especially when we must here purchase goods therefor (as has happened on this occasion), but the entire welfare of the Colony depends thereon."

There was here no levying of forces for the sovereign, no assembling of the *posse comitatus*, but the hiring of tribesmen who did not recognize Dutch sovereignty, and who were moved, not by Dutch command, but by subsidies.

So with military services. The Indians rendered such services to the Dutch in putting down the slave insurrections, and they were paid for their services. But there is no evidence that this

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military service was anything more than the service of ordinary mercenaries. There is nothing to show that the Indians were called out as a matter of right, or that the employment of them was regarded on either side as an employment of subjects; on the contrary, the evidence contradicts any such proposition; nor does the British Case assert that it was ever otherwise than an entirely voluntary service, which the Indians regarded as being in their own interest and for which they received an equivalent that made it worth their while.

So with the industrial employment of the Indians. The British Case says (p. 95):

"The Indians, however, acted not only as the allies and soldiers of the Dutch, but also as their servants,"

and it instances such acts as carrying timber, field labor on the plantations, services as boatmen, pilots and guides, and making roads and paths in the neighborhood of the post. It also refers (p. 96) to their preparing annatto and other products, and "in bringing these to the Post to be forwarded to the Dutch markets." It also refers to their employment in the fisheries.

That the Indians were employed somewhat, although not extensively, by the Dutch is true; but that it has any significance in the matter of political control is difficult to perceive. As to employment at their own homes in preparing annatto, this was simply what they did in preparing their merchandise for sale to the Spanish, Dutch, and other white traders. The fact that they caught fish and sold the fish to the Spaniards and Dutch is equally unimportant.

The employment of Indians at the post of Moruca is equally without significance. None of these things have anything to do with political control. Had the Dutch, as did the Spaniards, gathered together twenty thousand Indians in settlements, where they remained continuously under a civilized and orderly government, devoting themselves in these settlements to tilling of the soil and to useful arts, it might be said to be a step, and a long

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step, towards establishing political control over the Indians so employed, but the difference consists in the fact that the political relation which was established by the Spaniards with the Indians never was established by the Dutch.

We think that we can affirm with confidence that up to the time of Lord Palmerston's reference to the tribes living near the fort as "independent Indian tribes," there had been no pretence, either on the part of the Dutch or of the English, that the limits of Dutch Guiana had been extended by reason of any control, political or otherwise, exercised over the Indian tribes. Schomburgk did not allude to it. He was not, according to his own statements, in any way influenced by it in fixing the boundaries he proposed. He based them wholly upon what he claimed were traces of actual occupation by the Dutch and upon considerations as to natural boundaries. It remained for the makers of affidavits in British Guiana, after the adoption of the Treaty, to discover innumerable "Indian traditions" as to the supremacy of the Dutch over the tribes. It is a curious commentary upon the case of these Indian affidavits, taken before Mr. McTurk and other British officials, to prove Indian "traditions" before this solemn tribunal, that it was a common thing, both in Dutch and British practice, for a case to be thrown out of court because the Indian testimony on which it rested was deemed worthless.

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CHAPTER XVI.

ADVERSE HOLDING—MISCELLANEOUS ACTS.

It has been shown by the evidence that, notwithstanding the claims made by the British Case, there was no settlement whatever, during the history of the Dutch colony of Essequibo, west of the falls of the Cuyuni, in the interior, or west of Moruca, on the coast.

It has been shown also that, in so far as political control is to be considered a determining factor in the question of adverse holding, no political control was exercised by the Dutch in that territory, but that it was maintained by the Spanish; that the control so maintained by the Spanish included numerous acts of territorial dominion, implying the exercise of the highest rights of territorial sovereignty, and that it were exerted not alone upon subjects, but upon foreigners in the territory, and particularly upon the Dutch; and, finally, that it extended over the whole period of Dutch rule.

Nor is it claimed by the British Case that political control, in any ordinary meaning of that term, was exercised by the Dutch in the territory in dispute, or that anything resembling the exercise of sovereignty by the agency of political government was to be found there or was even thought of by the Dutch colonial authorities. It is not suggested that any territorial jurisdiction was exercised over all persons, as being in a territory subject to such jurisdiction. It is not intimated that a Spaniard, a Frenchman, or even an inhabitant of Surinam, was ever apprehended in this district, or tried at Essequibo for an offense committed there. It is not pretended that a single grant of land was made by the Dutch either west of Moruca or of the falls of Cuyuni. It is not pretended that any right of exclusion was ever exercised by the Dutch over the territory, although such a right was constantly asserted by the Spaniards, both in the interior and the coast.

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Of the acts of the Dutch in connection with the territory which the British Case advances as in some sense bearing on political control, those connected with trade and with the Indians have been discussed. A few minor facts, referred to for the same purpose, remain to be considered. They are as follows:

(1) Transit and passports.
(2) Timber-cutting.
(3) Postholders.
(4) Recapture of fugitive slaves.
(5) Creole Dutch language.
(6) Hunting and fishing.
(7) Mining.

(1.) Transit and Passports.

The giving of passports implies nothing with reference to territorial control. Passports, even in civilized countries, are given to subjects leaving the country to travel in foreign countries with the object of affording an official identification, both as to the individuality and as to the nationality of the holder. They served the same purpose in the seventeenth and eighteen centuries in Guiana. They served the additional purpose of a permit on the part of the Government of the person to whom they were issued to make a journey and of a trading Company to trade. In that early state of society and in the situation in which the colonies found themselves, it was necessary for the Colonial authorities to exercise an extensive supervision over the movements of the colonists, and to know at all times where to find them. If they were not at their homes or in the limits of movement of the colony, it was necessary for the Colonial Government to know where they were; and it was substantially the practice of both colonies not to allow individuals to pass out of the colony without passports from their own Government. The passports were of use when the individual came into the territory of the other State, because they afforded a certain indication as to

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who the bearer was, and what he was doing, and whether his doings were regular and proper; in fact, if he went without one he ran the risk of suffering arrest.

Thus, it was the regular practice to give passports to colonists leaving the colony by way either of the interior or the coast territory. These passports were required to be shown at the Moruca post. Thus, the Postholder at the latter place was instructed in 1767 (B. C. III, 154) that "he shall allow no one to pass the post without a passport, but arrest and bring up any one coming there without one."

Jan la Riviere in 1768 had a passport to enable him to pass the post at Moruca, though it expressly forbade him to settle in Barima (B. C. III, 176).

In like manner, when, after the destruction of the first Cuyuni post, the Court at Essequibo, in 1761, established a sort of informal post (B. C. II, 202) at the plantation of Crewitz, below the Cuyuni falls, and therefore at the colonial frontier, it resolved, in order to put a stop to contraband trade, especially in slaves, "to order every one trading or going up that river to provide himself with a proper pass, which must be shown to C. Crewitz, at whose residence they are to make a halt."

In the same way, passes were frequently issued to pass the post of Arinda, in the upper Essequibo (B. C. IV, 189).

Thus, Storm reported in 1770 (V. C. II, 216) that a young colonist, "having asked for a permit to go to Maroco, and having obtained the same, I now hear that he went farther, and that he was arrested and is now a prisoner in Orinocque." This would imply that colonists could not even go to Moruca without a passport.

So, the Governor of Surinam wrote in 1712 (V. C. II, 73):

"No whites are allowed to enter the Orinoco except with a pass."

Possibly, however, this may mean a pass from the Spanish Government.

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The Dutch found the use of passports particularly necessary on account of the trade restrictions which they had thrown around their colonists; and if one of these left the colony for a time, it was necessary for the Colonial authorities to know that he was not engaged in a forbidden trade, to the prejudice of the Company, and it was not unusual to name in the passport the trade in which the colonist was allowed to engage. Thus, Commandeur Van der Heyden reported (B. C. I, 238), January 6, 1714, at which date, it will be remembered, the reservation of trade in red slaves, annatto and balsam was in operation:

"In the month of September of the past year I received information through an Indian that a certain Christoffel Berkenbosch some little time before had asked for a passport to trade for vessels in Orinoco. There, against the orders given and the prohibition made, he had managed to get ten red slaves and three casks of balsam oil, wherewith he intended to make his way to Surinam, but through severe illness as he was returning had been compelled to land near the River Pomeroon. I immediately sent orders to the Postholder in Wacquepo to arrest the said person and his merchandise, provided they could be got, and to bring them to the fort, which order was promptly carried out. The goods being come into our power have been confiscated to the profit of the Noble Company."

In 1719 the Court of Policy reported the capture of several Dutch colonists in Orinoco for violation of the trading regulations of the Spanish in that river (B. C. I., 250), stating:

"For this reason, it has been resolved to grant no passes to Orinoco before and ere we shall have received circumstantial information of everything, so as to give satisfaction to the aforesaid Governor [of Guayana], and maintain friendship with our neighbour."

Passports, however, were given on both sides. They are repeatedly referred to in the correspondence as given by the Dutch, and they are occasionally referred to as given by the Spanish.

Thus, Storm noted, in 1764 (V. C. II, 155):

"Two Spaniards came to me with formal passports from the Governor to come here. Essequibo was not expressly mentioned in them, but the neighbouring Colonies of friends and allies, which is equivalent."

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The Dutch, it will be remembered, had some difficulty about the wording of their passports, and Storm insisted to the Governor of Surinam, in 1764 (V. C. II, 158), that he should not name the river Barima in his passes to Surinam Dutchmen, because the Spanish maintained that that river was theirs, "*wherein I believe they are right*," and because, taking umbrage at a reference to their territory, they had sent some of these passes to the Court of Spain.

So far from the action of the Dutch authorities in reference to passports being an evidence of Dutch territorial claims, it is, in this instance, a clear absence of such claims. It is all the more remarkable in view of the fact that in 1734 it was certainly the practice of the Dutch to give passports to Orinoco, for Commandeur Gelskerke, in that year, stated (V. C. II, 87) that, as a new departure, "until further orders, no more passes to Orinoco will be issued by me."

Whatever the practice was, it has no significance as indicating territorial control. The requirement that the passports should be presented at the frontier posts of Moruca and the Cuyuni falls, as a permission for colonists to go out of the colony's territory is in the highest degree significant.

The British Case makes a statement (p. 88) that the pass system was applied to Indians. This statement appears to be incorrect, at least in so far as the general granting of passes to Indians was concerned. The only cases which are referred to in support of it are as follows:

First, in 1763 a pass was given by the Commandeur in Demerara to permit a Carib Owl to pass from Demerara to Berbice (B. C. III, 104).

The second (B. C. IV, 189) was a case where the Director-General at Essequibo gave a Carib Owl a passport for Barima, in 1778.

In the third case (B. C. IV, 190), the Director-General gave to another Owl, "who had gone down the first fall with his vessel,

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whereby all his goods were lost," a certificate that his tribe "is recognized as our friends and neighbors, and has liberty to do business in our Colony."

In the fourth case (B. C. V, 73), the Commandeur, in 1789, gave a passport to an Indian to go to the coast of Essequibo.

None of these cases indicate what the words in the British Case would seem to imply—any general practice of controlling the movements of the Indians. In fact there was no such practice. The Indians came and went as they pleased. Thus, the instructions of 1764 to the Postholder at Arinda (B. C. III, 112), directing the Postholder to arrest traders of the colony who were not provided with a proper pass, stated: "It is well understood that free Indians are not included in this." In fact, the Indians, coming as they did mainly from the interior, would have no means of obtaining a passport until they reached the Company's capital at Fort Zeelandia.

That in a time of great disturbance the Commandeur at Demerara should have given a pass to an Indian chief going to Berbice is not a fact of any significance, as he was travelling from one Dutch Colony to another; and, moreover, his travels are of no particular interest in this controversy, as the localities named were far to the eastward of the territory in dispute.

Nor is it worthy of remark as indicating a general practice that the Director-General at Essequibo should have told the Postholder at Moruca to let an Indian pass his post from the colony into the Barima. Probably the paper was given as a sufficient credential to justify the Postholder in giving the chief "refreshment" as he passed the post. Unfortunately it did not have the desired effect, as, a few weeks later (B. C. IV, 190) the Owl came back, reporting that, instead of the Postholder's having given him the rum he wanted, the Postholder had taken away all his rum, which is duly entered by the Director-General in his journal as follows:

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"The Owl Awamerie brings me back again his passport of the 8th May last, and complains that the Postholder Aru. Dijk has taken away from him on the way as he was going two bottles of kiltum, and on his return a corrial, without making any payment therefor,"

which shows how necessary it was, not that the Indians should be protected by the Postholders, but that they should be protected from the Postholders, and of how little avail the passport of the Director-General was to give them this protection.

Still less is any significance to be attached to the certificate given by the Director-General to the unfortunate Indian who lost his wares, as frequently happened in passing the falls, which would enable him to obtain consideration and possibly credit in making up his losses with the colonists.

Nor is it worthy of remark that the Commandeur should have given a chief a passport to go to the coast of Essequibo.

Mere transit over territory cannot give title, even in the case of private individuals; much less can it be the foundation of a public title.

That during a period of one hundred and sixty-six years there was in the aggregate a good deal of passing back and forth over this territory by the inhabitants of the settlements which adjoined it to the east and west cannot be doubted. It might be assumed to be a fact, even without a word of evidence, not only that Dutchmen used the territory for purposes of transit, but that the Spaniards did the same.

There is abundant evidence of the presence of Spaniards: witness the careful instructions to the Postholder at Quive-Kuru, in Cuyuni, a post only forty-five miles from the fall, and, therefore, from the Dutch frontier, in reference to Spaniards who might come that way; and these instructions (B. C. II, 168) were given, it must be remembered, on the establishment of the first post and before the Director-General had any reason to suppose that Spaniards were coming to attack it.

Still more conclusive is the report of the Court at Essequibo,

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July 27, 1750 (B. C. II, 68), from which it appears that the Spanish traders were to be found not only in the upper Cuyuni and in the western part of the interior, but that they came themselves to trade among the settlers living in the upper part of the Essequibo plantations, and that this was a practice so well established that the Court appointed a Committee to take steps to induce the Spaniards to come down the river to the Company's stores at Fort Island.

If such was the condition of affairs near the Essequibo frontier at the Cuyuni falls, what must it have been in the western part of the territory which bordered on the farming and mission settlements of the Spaniards, with their score of villages, their thousands of Indians engaged in agriculture, and their vast herds of cattle? Here the Dutch, from the nature of things, must have been comparative strangers; so much so that while the coming of Spaniards and their trading with the settlement at Essequibo is spoken of by the Committee as a frequent practice, the presence of a single party of slave traders at the mouth of the Curumo, or on the Tocupo, is considered a matter of sufficient importance to be reported to the Commandant at Guayana by the Prefect of the Missions.

As to the coast territory, we know that it was used much less by the Dutch than by the Spaniards. Of trade of the Essequibo Dutchmen with the Barima Indians there was none, except what was carried on at the frontier post of Moruca. Trade with the Orinoco was conducted, in accordance with the policy both of the Company and of the Director-General, mainly by Spaniards going to Essequibo, especially in the latter half of the eighteenth century.

Even as early as 1762 (V. C. II, 148), the Court of Policy could say that "not more than two of our settlers carry on trade with that Spanish river," and that "their boats are mostly manned by Spaniards, who are entrusted with the business, both in cattle and tobacco."

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(2.) TIMBER-CUTTING.

The claim of the British Case in reference to timber-cutting is stated as follows (pp. 83–4):

"Closely connected with trade, but involving still more direct exercise of dominion over the country, is the assertion by the Dutch of the right to control the cutting of timber.

"Upon the foundation of the separate Colony in the Pomeroon in 1686 the Commandeur asked the Company for instructions as to the terms upon which he should allow timber-cutting. He was ordered to forbid it to all foreigners.

"It is clear that before 1706 the cutting of timber above the falls in Cuyuni had become a common occurrence, for in that year a party of runaway slaves were enabled to pass the Indians at the falls by giving out as an explanation of their journey that they were obliged to go right up country in order to cut planks there by the orders of the Commandeur, and that they intended to return again in fourteen days.

"In 1734 a general prohibition of timber-cutting in Essequibo, Pomeroon and Demerara was issued by the Zeeland Chamber.

"In 1735 leave was given to the Company's Director to fell timber in Cuyuni for private building purposes. Permission to cut timber in Waini was given in 1754, and in 1756 a similar application was entertained. There had also, before this time, been timber felled in the Pomeroon under lease of the Company. But in 1752 an applicant for a like grant in Pomeroon was informed that that river was not open, but that permission might be obtained for Waini. In 1755 leave was refused for Capoey Creek. In 1756 an application to cut wood in Pomeroon and Waini was made by one Knott, who proposed the payment of 1,000 guilders annually, besides the usual charge on the vessels in which it was exported. The Director-General and the Court of Policy, however, differed on the expediency of granting the application, and it was referred to the Directors. In 1766 there was a man cutting cedar-wood in Barima on account of Mr. Knott, but during the whole time of office of Storm van 's Gravesande, which lasted till 1772, he opposed the opening of the Pomeroon for timber cutting.

"In 1766 there were saw-mills on the Massaruni, to which land was attached by grant of the Company. In 1773 the Director-General reported that most of the lands in the upper reaches of the River Essequibo had been already annexed as timber-grounds for the plantations below. In 1774 there was a Petition for 2,000 acres of land in Pomeroon for

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cutting timber. In 1793 the Commandeur was instructed to give his attention to the management of the timber in the Colony.

"In 1803, the Dutch, who had resumed possession of the Colony in 1802, proposed to make regulations for the protection of the timber, and for making grants for lumbering in Pomeroon, Waini, and Barima."

It would appear from the above statement that the Dutch exercised the right of timber-cutting in the disputed territory to so great an extent as to make it one of the principal features of the British territorial claims. An examination of the facts, however, shows that no such alleged practice existed..

It is freely admitted that the Dutch authorities exercised the right to cut timber within the limits of the Essequibo settlement, just as they exercised other territorial rights there. The territory where they exercised such rights included the banks of the Essequibo and the Cuyuni and the Massaruni up to the lowest falls. The names, as has been already shown, by which the little strips at the mouths of these two rivers below the falls were designated were "in Cuyuni," and "in Massaruni." It cannot be insisted too often that these names, so confusing in their sound, were applied to grants and settlements only in the rivers below the falls.

It is also admitted that the Government controlled timber rights in the Pomeroon. It has been shown that the Dutch regarded the post at Moruca as their frontier in the coast territory, just as they regarded the Cuyuni and Massaruni falls as their frontier in the interior. They had twice established a settlement in this territory. They from time to time discussed the question whether it should be opened for a new settlement.

The only questions, therefore, with which this discussion is concerned are those relating to timber-cutting west of the line which has been referred to as enclosing everything ever seriously claimed or attempted to be controlled by the Dutch, namely, the fifty-ninth meridian.

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These simple facts dispose of nine-tenths of the references to timber-cutting, which are set forth at length in the passage above quoted from the British Case.

As to the first occasion referred to, where the Commandeur of the newly established settlement of Pomeroon, in 1686, asked the Company for instructions as to the terms upon which he should allow timber-cutting, and was ordered to forbid it to foreigners, the fact was, as shown by the references (B. C. I, 204 and 207), that, in reply to the inquiry of the Commandeur, the Company forbade him to allow any foreign ships to enter the river Pomeroon for cutting wood or for any business transactions. This was an ordinary exercise of jurisdiction at a Dutch settlement.

The same may be said of the general prohibition of timber-cutting in Essequibo, Pomeroon and Demerara issued in 1734, which was simply a regulation governing Dutch colonies over which the Company exercised territorial rights; of the leave given to the Company's Director to fell timber "in Cuyuni" (and therefore below the falls) in 1735; of the felling of timber in Pomeroon under lease of the Company; of the refusal of leave to cut timber in Pomeroon in 1754, and in Capoey Creek, a small tributary of the Essequibo, near its mouth, in 1755; of the application to cut wood in Pomeroon in 1756; of Storm's opposition to the opening of the Pomeroon for timber-cutting down to 1772; of the saw-mills on the Massaruni (also below the falls) in 1766; of the lands in the upper reaches of the river Essequibo which had been annexed as timber grounds for the plantations below in 1773; of the petition for cutting two thousand acres of timber in Pomeroon in 1774, and of the instruction given to the Commandeur to give his attention to the management of timber in the colony in 1793. This disposes of nearly everything on the subject.

Only one allusion is made, in connection with timber-cutting, to the interior district. This is the statement that in 1706 a party of runaway slaves (B. C. I, 228) succeeded in deceiving the Indians

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at the falls, who would have got a reward for bringing them back, by the statement that they "were obliged to go right up country in order to cut planks there by order of the Commandeur" and that they were then to return. The fact that this information deceived the party of too credulous Indians is taken by the British Case as conclusive evidence that "before 1706 the cutting of timber above the falls in Cuyuni had become a common occurrence." It is not pretended that there is any direct evidence of timber-cutting in this region, or that there is the remotest allusion made by the documents and correspondence to such an act: it is only assumed that it was done because the slaves deceived the Indians by the story.

The reliance upon such evidence as this to prove the exercise of certain territorial rights by the Dutch as a foundation for the title of Great Britain to the territory in dispute only shows how slight is the real foundation for this claim and to what shreds of evidence the British Case is compelled to resort to sustain it.

Timber was not cut in Cuyuni for a very good reason. Im Thurn said in 1880 (V. C. III, 407), that the timber extended "as far as the lowest cataracts on the various rivers. It is impossible at present to cut timber profitably beyond the cataracts, owing to the difficulty of carrying it to market."

As to the statement made in the British Case that "permission to cut timber in Waini was given in 1754, and in 1756 a similar application was entertained," reference may be made to the reports of the Director-General on the subject of these very grants, in 1758 (B. C. II, 143), where he goes over the whole subject. He said:

"Proceeding now to answer what you are pleased to ask with respect to cutting timber in the River Pomeroon, I have the honour to say that, in the aforesaid river, . . . this E. Ling has taken away from there two ship-loads of timber, after which he, having again left this Colony and having gone to Barbados, this concession was withdrawn, and it was resolved to grant none further; but the making of timber in the River

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Waini was left free to those who should apply for it. OF THIS NO USE WAS MADE, NEITHER COULD IT BE MADE, because of the shoals in the upper Waini."

This disposes of every reference in the British Case to timber-cutting, except one, to the effect that "in 1766 there was a man cutting cedar-wood in Barima on account of Mr. Knott."

The man in question, as shown by the reference (B. C. III, 132) was one of that famous "rag-tag-and-bobtail party of our colonists, staying there under pretense of salting, trading with the Indians, and felling timber, &c.," of whom Storm said (B. C. III, 131) that "they live there like savages, burning each other's huts and putting each other in chains, and I fear that bloodshed and murder will come of it." The man who was cutting the cedar-wood was Adams, who had been charged with setting fire to Rosen's hut, and it was of his doings and those of his fellows that Storm had written to the Governor of Orinoco, on the ground that, in his own language, "the west side of Barima being certainly Spanish territory (and this is where they are), I can use no violent measures to destroy this nest, not wishing to give any grounds for complaint."

The whole claim in reference to timber-cutting in the disputed territory, therefore, comes down to this: that there is no evidence that timber grants were ever issued, or that timber was ever cut, in Cuyuni above the falls by the authorities or the colonists of Essequibo; that there is no evidence that it was ever cut in the coast territory west of Moruca, but, on the contrary, there is the statement of the Commandeur that it never was cut, except upon a single occasion, when the act was done by one of a party of outlaws, against whom Storm was unwilling to proceed without the consent of the Governor of Orinoco, because in his opinion, they were on Spanish territory.

This is the record of Dutch timber-cutting in the disputed territory during a period of 166 years.

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(3.) Postholders.

The statement is made in the British Case (p. 86):

"The principal officers through whom the Dutch West India Company carried out their general control were the Postholders."

It is not clear from this statement whether the Case refers to "general control" within the limits of the Colony's settlements or outside of them.

If it refers to control within the settlements, it is only partially correct; but whether correct or not, it is a question outside the present discussion.

If it refers to control outside the Colony's settlements, it is entirely incorrect.

In support of the statement, the Case refers to the lists of the Postholders given in B. C. VII, 149–175. It also refers to the instructions for the Postholders, which it says "are extant for each of the principal posts, Arinda, Cuyuni and Moruca."

The statement that Cuyuni was one of the principal posts is grossly contrary to the facts and in the highest degree misleading. The records of the Company, giving the lists of employees from 1691 to 1786, to which the British Case refers, and which are printed in its Appendix, show that during that period two posts were continuously maintained: one, that at Mahaicony, a creek forty miles to the eastward of the Essequibo; the other, that at Moruca or Pomeroon. No post, as has been repeatedly stated in this Argument, was established at Cuyuni until the post at Quive-Kuru, in 1755, which was wiped out by the Spanish in 1758, to be succeeded, after an interval of eight or nine years, by the feeble post lower down, which was abandoned under a threat of Spanish attack, and, finally, by the so-called post (without a Postholder) kept by the two Byliers on an island not far from the lower falls which was so obscure that the Spaniards never knew of its existence, and which came to an end in 1772 by the death of one

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Bylier and the removal of the other. The proposed post in Cuyuni in 1703 was never established.

These facts in reference to the post in Cuyuni are among the most patent facts in the evidence in this Case. During the one hundred and sixty-six years of their colonial history down to the transfer of the colony to the British, the post existed at the outside an aggregate period of eight years; twice it was attacked or put an end to by the actual or threatened exercise of "political control" by Spain. In the last three of these years it could hardly be called a post at all.

The bracketing of it with Arinda and Moruca, as constituting one of the three principal posts, can only be accounted for by a complete ignoring of the facts of the case.

The principal posts of the Dutch during this period, and in fact the only posts, with the exception of the fitful and unsuccessful attempts in Cuyuni, were: Mahaicony and Moruca, which lasted during the whole period; Demerara, until it became a separate Commandeurie under the Director-General, and Arinda, from the time of its first existence, in 1737. Of these, Mahaicony and Demerara were on the east of the Essequibo, and therefore had nothing to do with the question of Spanish boundary, while Arinda was on the upper Essequibo.

The object of the Moruca post has also been fully explained, that of a frontier defence and custom-house. As far as the evidence shows, it exercised no control in the territory west of Moruca.

In the northern half of the disputed territory, which has been designated in this Argument under the name of the Coast Territory, namely, that west of Moruca, there was no post whatever. In the southern half of the disputed territory, which has been designated here under the name of the Interior, there was no post excepting the Cuyuni posts.

On September 27, 1763, the Director reported to the Company

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(B. C. II, 226) the posts belonging the Company, which were four in number:

(1) Moruca, which "was of very great importance when trade was still carried on there for the Honourable Company; it then furnished oreane dye and boats, and since the cessation of the trade there is a great want of the latter."

(2) Mahaicony, between Demerara and Berbice. "The chief use of this post," said the Director, "is really to keep possession of the country, for without it Maycouni would already have been inhabited some time from another side" (doubtless meaning Surinam).

(3) Arinda, above Essequibo, "really intended for the trade in red slaves and dye."

(4) The "still abandoned Post in Cuyuni, abandoned since the raids of the Spaniards."

Repeated complaints were made by the Director of the incompetency of the Postholders. As a consequence, the work which the Postholders were supposed to do was only half done, and in most cases not done at all. Storm quoted, May 30, 1766 (B. C. III, 133), one of the leading colonists as saying:

"It is a crying shame that, no matter what pains one takes, one can get no faithful Postholders. If only those fellows can get rum, they never trouble themselves about anything else."

A little later, December 8, 1766 (B. C. III, 139), he said:

"The Postholder of Arinda not having come down the river, in spite of my reiterated commands, and not having executed any of my orders, and everything there being in confusion, I have placed one of the assistants under arrest here, and sent a subaltern officer up the river to bring down the Postholder."

He added:

"If we could only be so fortunate as to get hold of some competent Postholders, we should very soon have good results. But this was impossible up to the present."

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August 10, 1767, the Director-General again had to complain of his Postholders (B. C. III, 148). He said that the Caribs from the Upper Essequibo reported that

"There is neither Postholder nor assistant to be found at Post Arinda, and that they have not been seen for fourteen days; that the house is half ruined and the warehouse broken open and empty."

In a letter of the Director-General, March 20, 1767 (B. C. III, 141), he said:

"It is certain we are gradually becoming more aware how extremely important this matter [incompetent Postholders] is to the service of the Honourable Company and the maintainance of the Colony. Up to the present I have not had a single one that I could call good or even passable."

In a letter to the Company, December 9, 1767, the Director said (V. C. II, 173):

"It is unfortunate that no competent person can be found here for places of such an importance to the colony; they are nearly all men whose drinking habits would make them unfit for such a post."

(4.) Recapture of Fugitive Slaves.

The British Case dwells upon the recapture of fugitive slaves as an evidence of political control, but only in respect to the use of the Indians for this purpose. As has been repeatedly said, the pursuit of runaway slaves was regarded from the same point of view as the pursuit of strayed property,—a pursuit which frequently carries one upon his neighbor's land. The West India Company so regarded them in 1689 when it directed (B. C. I, 211) the removal of "the slaves and other chattels" from Pomeroon. There is, therefore, no significance in the mere recapture of slaves, nor is it so contended. As far as the use of the Indians was concerned, it is stated in the British Case (p. 92) that "it was customary to pay rewards for each slave recaptured." This admission at the outset puts an end to basing any claim to political control on the services of the Indians in recapturing runaway slaves. Control is not indicated by paying an Indian for services rendered any

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more than by paying a white man for services rendered. Judging, however, by the statements made by the Director-General in the latter part of the seventeenth century, there was great difficulty in obtaining the services of the Indians in the interior district for the recapture of runaway slaves even by paying for them.

The British Case (p. 92) states that, to prevent escape by the interior, "the Dutch to a great extent relied on the Posts in the Upper Essequibo and the Cuyuni." Considering that the whole colony lasted for one hundred and sixty-six years, and that the post in Cuyuni lasted altogether for eight years, during the last three of which the Director frequently complained that it was of no use in stopping runaways, this is a rather unwarranted statement.

In order to show a systematic organization of the Indians for this purpose, the British Case (p. 93) refers to the post of Moruca, and says that

"Around the Post was settled a permanent body of Caribs, Warows and Arawaks to the number of 600 or 700, some of whom could be always at sea patrolling the coast for the purpose of preventing the escape of runaway slaves, and facilitating their capture. These Indians were subjected to discipline and organization of a simple kind, and their presence added to the importance of the Post, which, as shown elsewhere, was of great value as securing to the Dutch control of the water-channels leading to the Orinoco frontier."

The authority referred to in proof of this effective organization of the Indians is a report of the Director-General made in 1772 (B. C. IV, 100), which makes the following statement:

"The numbers of the runaways increasing daily, this matter will end in the total ruin of a great many plantations unless efficacious remedies be adopted.

"The former Postholders in Maroco were able to do something to arrest the progress of this evil, they having at least six or seven hundred Indians around that Post, some of whom they could always have out at sea, but the unauthorized attacks of the Spaniards have driven these natives away, and the Spaniards even came to the Post, as your Lordships

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know, sword in hand, to drive away or carry off the few that still remained, and succeeded only too well in doing so."

The only important fact which this citation shows is that the Dutch were unable to maintain their system of a settlement of Indians around the post of Moruca, because the Spaniards drove them away, and that as a result the number of runaways was increasing so fast that it would end in a total ruin of many plantations.

Undoubtedly for a short time there were Indians living at the post or in its neighborhood for this purpose. The letter cited gives no suggestion that the Indians were "subjected to discipline and organization of a simple kind," nor is any other document referred to which discloses this fact; so that the statement would seem to be of a speculative character. It may, however, be based upon the evidence annexed to the British Case, which has been already alluded to, of the accounts of the different plantations charged with supplying rum at this time to the Postholder of Moruca, which sufficiently indicates the simple "discipline and organization" to which the Indians at the post were subjected.

The last statement, that the Post of Moruca "was of great value as securing to the Dutch control of the water-channels leading to the Orinoco frontier," is correct as applied to Moruka Creek, but not as applied to anything else. The post undoubtedly controlled the Moruca and it was possible to go by way of the Moruca to the Orinoco; but the suggestion that the post secured control of the water-channels in general would seem to be misleading.

(5.) Creole Dutch Language.

Much stress is laid in the British Case upon the fact that many of the Indians in the disputed territory are familiar with a *lingua franca* in use in that neighborhood, which goes by the name of "Creole Dutch," and which it is alleged, as might be supposed

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from its name, is more nearly related to Dutch than to any other civilized language. This fact is referred to as follows in the British Case (pp. 96–7):

"As a result of the constant intercourse between the Dutch and the Indians, there sprung up a language known as 'Creole Dutch,' which, when the British came into possession of the conquered territories, formed the best and most convenient form of communication between the settlers and the native population."

When the British came into possession of the conquered territories, the Indians with whom they came in contact were the Indians bordering upon the Dutch Colony of Essequibo. As these Indians had bordered on the Dutch colony of Essequibo for a period of one hundred and sixty-six years it is not surprising that a mixture of native and Dutch language should have "formed the best and most convenient form of communication between the settlers and the native population." But when the conclusion is drawn that "the fact that the Indians of a district spoke this language is of itself strong proof that the district in question was Dutch," as it is asserted in the British Case, at page 97, no impartial mind can subscribe to it. "Strong proof" is something very much stronger than this. It is no proof at all of the fact that the district was Dutch. It is only proof that the Indians in question, or their ancestors, had been in contact with the Dutch. The Arawaks of the upper Cuyuni, who after the Venezuelan Revolution took refuge in the Moruca, were much more thoroughly Spanish than any Indians in the neighborhood of Essequibo were Dutch. They not only spoke the Spanish language and bore Spanish names, but they had an education which placed them, according to the testimony of numerous English observers, far above all the other Indians in the disputed territory.

The Case goes on to say:

"It is therefore worthy of note that this language was spoken by Indians of the Massaruni, Essequibo, and Cuyuni as the language next to

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their own best understood by them, and was used by them in their intercourse with the settlers, and that Governor Barkly, when he visited this part of the Colony in 1850, found that this dialect was still spoken by the native Indians in the district of Barima, and that Dutch words had also been incorporated in the native Indian language."

That the Indians of the Essequibo were able to talk broken Dutch may readily be admitted. That the Indians about the Massaruni and Cuyuni below the falls, and even to some extent above them, might have been able to use the same language may also be admitted, for the Dutch slave traders were unquestionably active in this neigborhood.

As to the visit of Governor Barkly to Barima in 1850, his observations are best disclosed by his own affidavit, made in 1897 (B. C. VII, 236). The statement that Indian chiefs bore the names of Jan, Hendrik, &c., may be matched by the fact of such names as Pasquallé, José Rosario, José Robeiro, and many others, among the Arawaks. Clementia, one of the most famous of these captains, lived in precisely the same locality, on the Barima. He was not an Arawak at all, but a Warow (B. C. VII, 209). And many other instances might be found in the evidence appended to the British Case itself.

Nor is it in any way remarkable that, as stated by the Governor, "their conversation and transactions with Europeans were *largely* carried on in the Creole Dutch language." The Governor refrains from saying in what other language they were carried on, and doubtless he had no one who spoke Spanish in his retinue.

Even if they were more in the habit of using Creole Dutch than Creole Spanish, which Governor Barkly is far from saying, the fact would be accounted for by the activity of rovers from Surinam, who were far more frequent visitors to the Barima district than the Dutch of Essequibo. Moreover, it is well known that great numbers of Indians who had formerly resided near Essequibo left that neighborhood when the practice of distribut-

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ing presents ceased about 1838, and spread all over the surrounding territory: "By the following year [1839] no Indians were to be found residing at the posts." (B. C. p. 105.)

The Governor, who was alive to the boundary question, seemed to think that the use of a few Dutch words was of great significance. The illustrations which he gives of such words in use among the Indians, however, only show that they gave Dutch names to those articles the use of which had been taught them by the Dutch. He says:

> "Even in their own dialects the Dutch names of, for instance, rum, gunpowder, &c., were incorporated."

He certainly could not have happened upon two more felicitous illustrations of the methods and instruments of Dutch influence over the Indians. Of this "influence," so much dwelt upon by the British Case, the main factor was rum; the second was gunpowder. The Spaniards never traded in either of these commodities with the Indians.

If the Governor had pursued his investigations further, he would probably have found in the Indian vocabularies plenty of Spanish words, but they would have related to religious worship, agriculture and the useful arts.

(6.) Hunting and Fishing.

There is very little evidence of hunting in the disputed territory. There is hardly a reference to it in a century and a half except a single mention of the wild-hog hunting near the Essequibo River in the early days. It is evident that no general practice of hunting was carried on by the Dutch in the disputed territory during this period; and their salted pork was bought from Indians who did the hunting and brought the meat to Essequibo.

In reference to the coast fishery, the Spaniards prohibited it to the Dutch as early as 1731, and their rigid enforcement of the pro-

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hibition not only at the mouth of the Orinoco, but along the coast and at that of the Waini, was one principal source of complaint in the Dutch Remonstrance of 1769. It was only as to the Waini, however, that the Dutch claimed a territorial right. As to the Orinoco fishery, which was carried on in the neighborhood of Point Barima, they asserted no ownership of territory, but only claimed the enjoyment of the fishery on the ground of immemorial use, a fact which the Spaniards disputed.

This claim of immemorial use, advanced in 1769, was made in ignorance of the facts. The Court of Policy in 1728 (B. C. II, 7) recorded the fact that the Spaniards had seized a Surinam vessel fishing in the neighborhood of the Orinoco. In 1746 Essequibo fishing canoes were seized, and again in 1760.

Even if the Dutch hunted and fished during this whole period, or during any fifty years of this whole period, over all the territory in question, it could not give them any rights as an adverse holder. These rights can only be based upon acts which are inconsistent with ownership in another; and hunting and fishing in uninhabited territory and on an uninhabited coast must be presumed to be done under the license of the owner, there being nothing to show to the contrary. Such hunting as was done was too inconsiderable and remote from the Spanish settlements to receive any attention. As was well said by the Court of Appeals of the State of New York:

> "It was never supposed that the hunter had possession of the forest through which he roamed in pursuit of game; and no more can a woodchopper be said to possess the woods into which he enters to cut logs."
>
> *Thompson* v. *Burhas*, 79 New York Reports, 93-99.

(7.) Mining.

Notwithstanding the fact that the disputed territory contained gold mines that were among the richest of the world, these mines were practically unknown until the Spaniards discovered them. The Dutch authorities suspected the existence of mines, and em-

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ployed an engineer to do a little prospecting in the Blue Mountains in 1742, who, however, found nothing. After a few months of unsuccessful search he was dismissed from the service of the Company.

There is no other reference to mines except to the so-called "Crystal Mine," near the upper Essequibo. Of this the only report is that a Postholder was on one occasion sent to examine it, but failed to do so, because the Indians "strictly forbade him to search or to dig" (B. C. IV, 18). It never was heard of afterwards. Notwithstanding this fact and the uncertainty of its location, it is put down as the "Crystal Mine of the Dutch" on Map 2 of the British Atlas.

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CHAPTER XVII.

EVENTS IN GUIANA FROM 1814 TO 1850.

It has been already stated, in reference to the date as of which the boundary is to be ascertained, that acts occurring since the acquisition of British Guiana by Great Britain in 1814 cannot be considered under any aspect as establishing title in Great Britain. It is nevertheless necessary, in view of the position advanced in the British Case, to take a brief review of these acts to show that there was neither British settlement nor control in the territory in dispute during this period, and that consequently, even under the construction of the Treaty for which the British Case contends, the events of this period do not affect the question of boundary.

In considering the events in Guiana subsequent to the Treaty of 1814, a division must be made at the year 1850, because of the agreement concluded in that year between Great Britain and Venezuela that neither party would occupy or encroach upon the territory in dispute.

The examination of the evidence, from 1814 to 1850, which is of course entirely to be found in the British Case, shows no advance from the position of 1814, in so far as the disputed territory west of the Moruca and Cuyuni falls is concerned.

The geographical divisions will be considered as before in the following order:

(1) Essequibo.
(2) Pomeroon.
(3) Interior.
(4) Coast.

1. Essequibo.

Development occurred during this period in the Essequibo settlements, chiefly on the coast. The trend of this development was largely to the eastwards towards Demerara, and culminated

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in the establishment of the capital at Georgetown, on that river. A considerable movement was also noticeable on the western bank of the Essequibo.

The mouth of the Essequibo has a peculiar conformation. The line of the left bank of the river is continued far out to sea beyond the line of the right bank, so that the mouth of the river is, properly speaking, a line drawn not at right angles to the river's course, but running diagonally across from the eastern headland to a point where the shore-line begins to trend to the west. This shore-line on the west, where the bank of the river at its mouth merges in the sea-coast, was known as the Arabian (or Arabisi) Coast, and contains the mouths of several creeks, such as Capoey and Oene.

Under the influence of the removal of the capital, the relative positions of the Demerara and Essequibo settlements became reversed, and whereas in the eighteenth century Demerara had been subordinate to Essequibo, in the nineteenth Essequibo became a mere dependency of the other. This effect was most noticeable, as might be expected, in the upper settlements.

In 1816 the boundaries of control were still the falls of the Mazaruni and Cuyuni, and they are mentioned as the limits up to which the militia were mustered, in the letter of Lanfferman, Captain of Militia, May 22, 1816 (B. C. VI, 6).

Even as late as 1831, it appears from the testimony of Quartermaster General Hilhouse in the trial of Billy William (B. C. VI, 41), that there were hardly any settlers in the neighborhood of the junction of the three rivers, and that there were none beyond the falls. He said.

"There is a white settler at the Falls, another at the junction, but grants have been made of the lands on both sides *up to the Falls* of the three branches of the Essequibo, viz., the Essequibo, the Mazarony, and Cayone."

Superintendent King, in his report of September 20, 1841, (B. C. VI, 115), stated:

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"There are no new settlers on any of the Crown lands, or, indeed, on any of the private lands up these rivers."

The Crown lands and private lands referred to are those below the falls.

This desolation extended as low as Fort Island, in the Essequibo. Superintendent Baird remarks, March 30, 1844 (B. C. VI, 131), that "Fort Island, the former seat of Government, is now fast merging into the primitive state of bush." During the early part of the period, a post was maintained at the mouth of the Massaruni, but this was abolished some time before 1839 (B. C. VI, 87).

In 1841, Horan, Keeper of the Colonial Jail, made investigation of various points for a penal settlement, and decided on the site of this abandoned post, at the mouth of the combined rivers, on the northern bank, nearly in the angle formed by the Essequibo and Mazaruni, where there was a quarry. He stated that there was no settlement above the post on the same side, except those of a few scattered Indians. The nearest settlement on the same side below the post was the Tiger Creek, in the Essequibo, a distance of twelve miles. (B. C., VI., 110). Here the penal settlement was established, and still remains.

2. Pomeroon.

While the plantations in Essequibo receded rather than advanced from the falls of Cuyuni, they showed a growth in the Pomeroon. Twenty years after the British acquisition there were perhaps half a dozen in the latter river.

Singleton, the Postholder in Pomeroon, writing in 1836, enumerates (B. C., VI, 61) five plantations above the Post on the Pomeroon as follows, namely:

Dumbarton Castle, raising cotton, coffee and plantains; Caledonia, in the same cultivation; Chapel; Phœnix Park, for plantains, and Land of Promise, where the cultivation consisted of

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coffee and plantains. There were no other settlements except a boat-building establishment, eight hours from the Post, and some wood-cutters above.

The Pomeroon River was now connected with the Arabian Coast at the extreme point of the mouth of the Essequibo by a canal, known as Tapakuma, which was considerably used, after the British acquisition of the Colony, as a route to the Pomeroon. In a return made in 1848 by the Superintendent in Pomeroon (B. C. VI, 168-9) of inhabitants (other than Indians) on the Pomeroon, its tributaries, and Moruca, extending to Tapakuma Lake, the total number of inhabitants, men, women and children, is given as 356.

The Post during this period was on the Pomeroon, Moruca having apparently been abandoned. It was at the mouth of the river (B. C., VI, 88). Its condition seems to have been deplorable. Hilhouse, Quartermaster-General of Indians, in November, 1823 (B. C. VI, 24), said:

"The Post of Pomeroon, in every point of view, is of more consequence than all the other Posts together. Under protectors of Indians it has been miserably neglected, and the only way to restore it to its proper state of consequence and utility is for his Excellency to take it under his own immediate charge and responsibility.

"For three years there has not been a cartridge at the Post, and a piratical canoe with fifteen or twenty men could, without resistance, attack and lay it in ruins. The Indians employed have had their payment withheld till they are exceedingly dissatisfied, and the faith of government sacrificed to the inactivity of individuals."

Superintendent King reported in 1839 (B. C. VI, 88):

"The Post-house is in a most miserable state, scarcely habitable. Unless something is forthwith done to this Post, it will not be habitable. * * * There are no Indians at the Post, but many are contiguous thereto, viz., in the nearest creeks, Wacapouw and Morocco."

And again, January 18, 1841 (B. C. VI, 101):

"Relative to the Post-house in Pomeroon, it is not possible for the Post-holder to reside in it. There is no person there at present."

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And yet again, in his report of September 20, 1841 (B. C. VI, 114):

"Your reporter visited the district of Pomeroon on the 1st July, and on arriving at the Post was sorry to find that the Postholder, Mr. McClintock, was labouring under severe inflammation of the eyes and cold, which your reporter attributes in a great measure to the wretched state of the Post-house and Post.

"The back gallery has fallen down, and the Postholder fell through the front gallery and hurt himself a good deal.

"The koker has been washed away; in consequence thereof the whole place is under water every tide, and by reason of which the sills of the house are quite rotten.

"The Post has become so infested with mosquitoes from the tide washing over the land that it is not hardly possible for any person to reside there, and the Indians will not, almost on any terms, call there."

On August 15, 1843, the Postholder, McClintock, again reports the deplorable condition of the post at Pomeroon, which, unless money is expended on it, is in danger of tumbling down upon himself and family; and in 1847, after referring (B. C. VI, 166) to the ill-health of his family at the post, he says that "to preserve their lives he was compelled to remove them from the post to a dry spot up the Pomeroon, which from the post is distant about 53 miles."

3. Interior.

So far as the British were concerned, the evidence as to the interior territory west of the falls of Cuyuni from 1814 to 1850 is an absolute blank. The authorities of British Guiana seem to have had no interest in it and to have made no reference to it. There is no record that anybody ever visited it or ever referred to it. When Georgetown became the capital, it was remote from the centre of authority.

Certain establishments were placed near the mouth of the Cuyuni and Mazaruni, such as the penal settlement and the English mission in 1831 at Bartica Point (B. C. VI, 46), and some interest was taken in the upper Essequibo; but that was all.

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Beyond the falls the country was more than ever, to the authorities of British Guiana, an unknown wilderness. There was no semblance either of settlement or of political control. On the other hand, in the western part of the district the Spanish settlements continued to flourish, until their development was for a time interrupted by the Venezuelan revolution.

In 1816 the number of inhabitants of the Spanish missions was officially reported as 21,246, divided among 29 settlements which had been founded at various dates between 1724 and 1788 (B. C., VI, 6).

During the next four years the interruptions caused by the revolution took place, in which, owing to the fact that the missions remained loyal to Spain, they became seriously involved in the revolutionary war. Many of the missionary priests were put to death during this period. By 1820, however, the Venezuelan Government was firmly established at Angostura, and the Congress of Angostura, representing the Government in the Province of Guiana, on January 27, 1820, took measures for the organization of the mission settlements into districts, enumerating 30 villages (B. C. VI., 17).

Blanco governed the settlements for the whole of the year 1820; that when he took charge of them the population was much reduced. He mentions several of the southern villages, namely Puedpa, Ayma, and Divina Pastora, as being exceptions to the prevailing tendency (B. C. VI, 40).

Blanco's administration put an end to the retrograde movement at the settlements in the mission valley, and from that time on, they recovered steadily, though probably not rapidly. The evidence fortunately gives a graphic statement of their condition in 1850, from an unquestionable authority.

Mr. Kenneth Mathison, British Vice-Consul at Angostura, in a report of June 14, 1850, to Mr. Wilson, the British Minister at Caracas, referring to the fact that gold had just been discovered

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at Tupuquen, makes the following observations upon the condition of that country as to settlement (B. C. VI, 182):

"From Upata, at the distance of 10 miles to the east, the road abruptly descends about 400 feet into the vast valley of the Missions. The distance from Upata to the Missions or village of Tupuquen is 140 miles over extensive tracts of undulating open pasture-lands, through occasional large patches of woods, and narrow but deep streams. There are no regular roads in this part of the country, and it requires great attention on the part of a stranger to find his way without a guide, from the numerous cattle-paths that intersect the whole distance.

"The direction of the road from Las Tablas to Upata goes south and by east, and from the latter village to Tupuquen east-south-east. The journey from Las Tablas to Tupuquen is generally performed in four days on horseback in the dry season, and on the whole route there are cattle estates at moderate stages from each other that serve as places of shelter and rest for man and beast.

* * * * * *

"The village of Tupuquen is composed of about thirty houses, covered with tiles; in its vicinity and along the borders of the whole Yuruary there are plenty of materials quite at hand for building huts, with abundance of cattle, at a low rate, and wild game can be obtained at all times and seasons. Indian corn, pease, rice, yuca for making cassava, and good tobacco, can be procured at a moderate price in the surrounding villages."

He adds:

"In December it is the Governor's intention to station a party of soldiers at Tupuquen."

4. Coast Territory.

As to the Coast Territory, during the period referred to, the British made no attempt at settlement. Except for the isolated and unimportant fact that one Sutton lived for a few months, in 1843, on the shell-bank at the Waini (B. C. VI, 128), no allusion is made to a settler in that district.

This isolated act, of course, has no bearing upon the question of settlement.

The report of Crichton, Superintendent of Rivers and Creeks in 1839, who traveled through the coast territory at that time,

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and who was an ardent advocate of the British policy of territorial extension, testified that there were no settlements. He said (B. C. VI, 76):

"Your reporter had communication with the Indian Captains of the various nations inhabiting that portion of the country, who all concurred in declaring that there were no persons except Indians resident in either of these rivers or any of the creeks their tributaries, and as he found no deviation in their statements, he feels perfectly convinced of their truth. . . .

"The district in question contains a numerous population of Indians, viz., Warrows, Accaways, Carribesee, and Arrawaks, the former the most numerous, and in the humble opinion of your reporter, it would be good policy to secure the *absolute possession of it to this Colony.*"

Great Britain certainly cannot claim that at the date of this report (1839) she was in possession, adverse or otherwise, of Barima.

Nor was there any post in the district.

Mr. Singleton, Postholder, writing from what he significantly calls the "Indian Post of Pomeroon," August 15, 1836, states:

"Thirdly, there are no Posts to the westward of this Post, and the nearest to the eastward is the Essequibo Post." (B. C. VI, 61).

On July 5, 1845, Postholder McClintock writes to the authorities (B. C. VI, 138):

"A Postholder situated in Barima could not only furnish the estates with plenty of Indian labourers, but also induce others from the Orinoco to follow their example."

Down to the signing of the Agreement of 1850 no attention had been paid to McClintock's suggestion.

Nor is there anything in the evidence to show that during this period the coast territory was used in the slightest degree by the English colonists for purposes of trade. They did not find, any more than the Dutch, that trade in the Barima was a profitable occupation for their time or capital. An extensive trade was carried on with the Spaniards from Orinoco, but, as in the Dutch period and particularly in the latter half of the eighteenth cen-

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tury, the trade was now wholly carried on by the Spaniards. The Pomeroon or Moruca post preserved its character of a frontier post and custom-house. Numerous illustrations may be given of the fact that the trade was entirely in the hands of the Spaniards and that the use of the post was that of a frontier custom-house.

Quartermaster-General Hilhouse, who was an excellent authority, in a report made in 1834, advocating the abolition of the posts, advised the retention of that of Pomeroon alone, on the ground that it was a frontier post, and therefore necessary. He said (B. C. VI, 52):

"I have further to remark that a Post *definitory of the jurisdiction westward* is indispensable, and that the Post of Pomeroon ought to be maintained on a most respectable footing, for weighty moral and political reasons."

In a report dated April 20, 1839, Superintendent Crichton opposed a projected removal of the Pomeroon post to Ara Piakka Creek,

"because placed at the mouth of the Ara Piakka it could only be useful in observing those who pass and repass by the Tapacooma Lock, whereas in its present situation all travellers from the Morocco, Wyena, and Barima, whether proceeding through the Tapacooma Lock or by the sea-coast, must pass it in either going or coming, and the most efficient site, in the opinion of your reporter, if removal at present be deemed necessary, would be the mouth of the Morocco Creek" (B. C. VI, p. 76).

The Superintendent opposed the removal backwards towards Essequibo, because the post would lose its character and efficiency as a frontier post, by reason of the fact that vessels coming from Barima would not necessarily pass it. Crichton, who was a decided advocate of territorial extension, proposed instead a site on the Moruca, which even he considered as being the extreme point at which such a frontier post and custom-house should be placed.

This character of the post as a custom-house at a port of entry is more fully shown by the next extracts.

In a report of Sept. 30, 1841, Mr. King, Superintendent of

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Rivers and Creeks, referring to the fact that an Orinoco trader had left one of his crew at Moruca, who had died of the small-pox, says (B. C. VI, 114):

"As for the Oronoko traders, your reporter respectfully would suggest that a Custom-house officer or aid waiter ought to be sent down to this district, as these traders bring many articles into the country which are liable to pay duty, but which they dispose of read ly in the Pomeroon and Essequibo coast. If such an officer was appointed down there, such an occurrence as these traders leaving any of their crew behind could not happen, as they would be obliged to give security to take back their crew, and observe all the colonial laws, as merchant-vessels are compelled to do in Georgetown."

Postholder McClintock called attention, in 1843, to the importance of the post being just at the entrance of the Pomeroon. He says that the Spanish Indians of Moruca, passing on the way to the Arabian Coast and upper districts of Pomeroon and "the Spanish traders from the Oronoco, who come through the creeks and savannas of the interior, arriving at the sea by the Morocco Creek, cannot pass to town, or to the Arabian coast, without being also seen." (B. C. VI., p. 126.)

In his report of September, 1843 (B. C. VI, 127-8), Postholder McClintock refers to the fact that the post is a custom-house. He says:

"Your reporter begs to observe that on the 8th August, two traders from the Oronoko arrived at the post. Their cargoes consisted of salted fish, cigars, and cheese. Neither party being prepared to pay duty in money, your reporter (sooner than allow them to pass without arranging) was obliged to take it out in the articles they had with them.

"10th. Another Oronoko trader arrived; cargo, blackeye peas and cigars, duty paid in money. 10th, went to Morocco Creek to overhaul a sloop from the Oronoko; cargo, forty 150 lb. bags blackeye peas, ten full-grown hogs, and ten young ditto. The owner of the vessel, who was on board, not having money to pay the duties, produced documents which proved that he was regularly cleared out at Angostura for Demerara, consequently allowed him to pass.

* * * * * * * *

"Your reporter, on the 20th September, was visited by Jose Rodinze, Postholder of Corioppo [Kuriapo], a village in Rio Oronoko. The gentleman

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in question, after paying duty on his cargo, which consisted of salted fish, cigars, and dried meat, proceeded on his way to town.

* * * * * * * *

"Your reporter, on the 28th September, received information of the arrival of a cargo of salted fish in Morocco from the Oronoko. Proceeded without delay to the village as far as the Rev. Cullen's, where he remained for the night. 29th, went further up the creek to where the fish was housed. Found 500 lbs. The duty was paid in money. Returned to the post on the 30th September."

The Venezuelan trade by way of Pomeroon was very active in 1843. The quarterly report of the Postholder says (B. C. VI, 129):

"During this quarter there have been twenty-three arrivals from the Oronoko. These cargoes consisted principally of salted fish. There were also a few M cigars, some dried meat, and three head of cattle.

"The amount of duty, King's and Colonial, is 187 dollars, which, with a full statement of the same, has been rendered to the Colonial Receiver-General.

"Your reporter begs to chose [*sic*] that he experiences great difficulty in collecting the duties from the Oronoko traders, owing to their neglect in not providing themselves with money previous to quitting home."

The Postholder also reports "that two Indian families have quitted Morocco and gone to reside in the Oronoko" (B. C. VI, 129).

On September 30, 1845, Postholder McClintock reports (B. C. VI, 140) that since the post-house has been undergoing repairs he has been compelled to reside a considerable distance up the river, "which prevented the possibility of attending as strictly as was necessary to the numerous Spanish traders that came up from the Oronoko in large canoes laden with fish and other articles, on which there is duty to be collected. Formerly, when he lived at the Post, the Oronoko duties amounted in one year to a sum bordering on 500 dollars; but since that period, now upwards of twelve months, the collections have been very inconsiderable," due apparently to the fact that the Postholder lived up the river.

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In 1847, Postholder McClintock petitioned (B. C. VI, 149), in reference to his district (the Pomeroon), saying that:

"he made frequent tours through the district, directing his particular attention to Morocco, having from time to time received information that in all the month of June several Spanish traders were expected, but unfortunately, he could not remain any length of time in the creek; consequently, all those who had cigars sold almost all they brought up to the inhabitants of Morocco, which he did not learn until the parties had already reached the coast. To try and prevent a recurrence of this kind it will be requisite that your reporter erect a house in the upper part of Morocco Creek beyond the village, and on a spot by which all cor'als, &c., would be compelled to pass. Unless a precaution similar to what he has proposed be established, it is totally out of his power to be responsible or to collect duties from the Oronoko traders. Your reporter considers it almost unnecessary to add that it would be contrary to the duties of his office, *even admitting he was made welcome by the Morocco people, Spaniards, which is quite the reverse,* to occupy any part of their dwellings while in the performance of his duties as Commissary. Consequently, to enable him to act independently, which he feels himself, by oath as well as principle, bound to do, there is but one step to be adopted, and that is, to erect a building in the upper part of Morocco Creek, on a site such as he would select."

From the above letter it appears that there was a considerable settlement of "Spaniards" about the Moruca. The language does not seem to refer to the Spanish Indians, a party of whom, as is well known, went to the neighborhood of the Pomeroon at the time of the Venezuelan Revolution and during the next half century or more dwelt in the neighborhood of Moruca and sometimes on the Orinoco, going back and forth as the fancy suited them. Whether McClintock refers to whites or Indians he is obviously referring to a population not acknowledging themselves to be British subjects. In his view and in their own, they are evidently "Spaniards," a phrase which can only be taken to mean Venezuelan subjects.

McClintock's recommendation as to the building of a house in Moruca was not carried out, at least not until long after the Agreement of 1850 went into effect.

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In a letter of April 9, 1849, to the Secretary, Superintendent McClintock dwells on the importance of Pomeroon and Moruca as points for a custom-house. He says (B. C. VI, 174):

"I have therefore to state that all Spaniards who trade to the Colony in coreals, canoes, and sometimes small sloop boats, are obliged, from the peculiar build of the crafts, to pass through Morocco Creek to reach the sea, the mouth of which is distant from the post-house about 3½ miles, and from whom, according to a special order from Sir Henry Light, I am compelled to receive duties; and, for that purpose, as also to prevent smuggling, said order directs me to reside at the mouth of Pomeroon River."

He adds:

"When once the present protection be removed or withdrawn, smuggling in rum, sugar, coffee, tobacco in roll, oil, &c., will be carried on by the Spaniards of the Oronoko."

These extracts show not only the character of the post as a custom-house, but incidentally they show the great extent and variety of the Venezuelan trade carried on entirely by the Venezuelans and its importance to the Colony of Essequibo. The statement given by McClintock is a picture of a constant succession of Spanish boats coming through the Barima from the Orinoco to Moruca. There is not a suggestion that any of these innumerable cargoes were brought in by English traders; there is not an intimation that an Englishman ever engaged in such trade. No notice is taken of this trade at all, and no supervision of it is attempted until it reaches what the British officials obviously regard as their frontier at Moruca. No supervision is ever attempted or even dreamt of in the Barima, where this constant stream of navigation, day in and day out, year after year, is to be found. Viewed in the light in which the British Case regards trade as leading to political control, the Venezuelan control of the coast territory at this time was complete.

Superintendent McClintock, December 31, 1849, again speaks of the importance of the custom-house, and says (B. C. VI., 177):

"for several months past many of the Spaniards who at one time were

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in the habit of sending up cargoes of fish, cigars, and tobacco, in roll, from the Oronoko, through the inside passage, . . . have lately preferred the cattle-vessels, which go direct to town,"

but since the publication of a recent ordinance,

"several Spaniards have it in contemplation to renew the former practice of coming up through the creeks."

Superintendent McClintock, December 31, 1855 (B. C. VI., 199) again calls attention to the importance of Moruca and Pomeroon as a custom-house. He says:

"That during this and the preceding quarter several cargoes of salted fish, dried meat, &c. came from the Orinoko, upon which the import duty should have been paid, but owing to the distance of reporter's residence from Moruca (upwards of 50 miles), the traders—all of whom coming prepared to reach the coast by sea, declined the journey, consequently, the duties which should have been collected for the Colony were utterly lost to it."

Here we have a curious illustration of the situation at Pomeroon. The English were maintaining their post on that river. The Moruca, however, afforded the Venezuelan vessels engaged in trade an outlet to the sea without touching the Pomeroon at all, and they of course went that way. As the post at the mouth of the Pomeroon was uninhabited and the Postholder was living fifty miles up the river, they naturally did not take the trouble to perform this additional journey of one hundred miles for the purpose of seeking out the Postholder and paying the duties, in consequence of which the duties were lost. Instead of an assertion of British control over Barima, it would appear that this was an abandonment of British control on the Moruca.

In his report for the quarter ending September 30, 1848, Postholder McClintock says:

"The Worrows, as well as every other tribe of Indian inhabiting the Rivers Winey, Bareema, and Amacuru, and also various other streams of less note within this extensive district, are up to the present moment totally

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unprovided with any kind of instruction, left entirely to themselves to indulge in all the horrors of a savage life.

* * * * * * * *

"It may be well to observe here that it is by the extraordinary skill and unerring aim with the arrow of the Worrows that the noted Morococo [Maracot] fishing of the Lower Oronoko is kept up, and, although introduced into this province by Spaniards, the fish are only salted by them, but on all occasions caught by the Warrow Indians" (B. C. VI., 170).

The fact last stated is very noteworthy, in view of the contention in the British Case that trade is an element of political control. The trade in maracot was carried on in this way: the fish were caught by the Warows of the lower Orinoco and Barima, who were experts in the business. The Venezuelans traded with the Indians for the fish on the spot, and then brought the fish to Essequibo to sell. Thus, they not only carried on a trade with Essequibo, but they carried on the Indian trade in the disputed territory as well, and they carried it on with the knowledge of the British authorities, and without any attempt at interference or supervision by such authorities. British colonists, on the other hand, carried on no trade in Barima, either with Venezuelans or Indians.

The question of a boundary in this territory is the subject of frequent suggestions on the part of the various Colonial authorities, and they throw considerable light upon the way in which the question was at this time regarded. The physical configuration of the district remained the same that it had always been. An open and easy access to it from the Orinoco by way of the deep channel of the Barima, the Mora Passage and the Waini, were the conditions on the west, while on the east the frontier post of Pomeroon was separated from it by the savanna, through which the passage, ten miles long (V. C. p. 27) was difficult and uncertain.

Thus, in February, 1839, when Superintendent Crichton made his first trip to Barima from Pomeroon, he "learned also that I could not proceed through the savannah, as it was almost dry, and totally impassible except for very small corials. Prepared to

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return down the creek, and proceeded by the sea-coast" (B. C. VI, 68). On starting for his return, in March, from Mora Creek, he learned "that the rollers were at present so heavy that a corial could not proceed by the coast, and the inland communications were all nearly dry." Therefore, as a choice of evils, he took the same passage, by which, after a journey lasting for two days, "and in repeated danger of being swamped," he came to Moruca (B. C. VI,72).

In a report of Postholder McClintock for the quarter ending December 31, 1848 (B. C. VI, 171), he states:

"The want of a canal through this part of Upper Morocco *forms a complete barrier* for several months of the year to all communication with the Rivers Winey, Barima, and Oronoko, thereby cutting off, although for a time only, that intercourse so essential to the general welfare of the Pomeroon district, but more especially to the Arabian coast."

This is strong testimony by McClintock, not only to the natural barrier west of Moruca, but incidentally to the importance of the trade exclusively carried on by the Venezuelans from Orinoco through the coast territory to the British settlements in Essequibo.

Such being the physical configuration of the country, and in the absence of any steps taken by the Colonial authorities to exercise control over the region, the suggestions of the officials of British Guiana as to the question of boundary are somewhat speculative. They serve, however, to throw light on the present British contention.

Governor Light, in a dispatch dated September 1, 1838, wrote:

"The Pomaroon river, at the western extremity of Essequibo, may be taken as a limit to the country, though there is a mission supported by the colony on the Maracca river or creek, a short distance westward, where 500 Spanish Indians are collected in a settlement under a Roman-catholic priest" (V. C., p. 167).

It is suggested that the word "country" is or should be "county," though the context seems to imply the contrary. It

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does not make much difference, however, as there was nothing of the country beyond the county.

We have seen that Quartermaster-General Hilhouse in 1834 regarded the post of Pomeroon as "definitory of the jurisdiction westward" (B. C., VI, 52).

Of the various advocates of the extension of British territory, none was more earnest than Crichton, the Superintendent of Rivers and Creeks in the Pomeroon district. We have seen how, in April, 1839 (B. C., VI, 76), referring to the whole district west of Moruca, he said: "It would be good policy to secure the absolute possession of it to this Colony." This is at least evidence that possession of it had not been secured to the colony at that time.

Crichton had given evidence of his uncertainty on the subject a couple of months before, in his first journey to Barima, where complaint was made to him that one Manoel, an Indian, had murdered his wife. He said (B. C., VI, 71): "Finding that this unfortunate transaction had taken place . . . on the left bank of the Barima River, *where the Government has never claimed jurisdiction*, I felt the difficulty of taking a decided step in the matter, and endeavoured to restore peace among them by reason and persuasion first and then threats, and imagined that I had succeeded." As he was about to leave the settlement he found that Manoel was making a disturbance, and notwithstanding his doubts he took him away with him. Manoel was not tried, however, but shortly after returned to his home.

In a report dated April 20, 1839, Crichton discusses the boundary question from the speculative or political standpoint (B. C., VI, 76–7):

"The unfortunate case of the Indian, Pero Mauvel [Manoel], as stated in the journal of your reporter, would seem to point out the necessity of concluding an arrangement with the Republic of Columbia respecting the western boundary-line of this Colony, which, in the humble opinion of

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your reporter, should include the mouth of the Barima River, and all its tributary creeks from the sea to the Cayoni River.

"The internal communication by water which commences with the Tapacooma is entirely cut off by the Barima River, and commences again, with the Amacoora Creek to the Orinoco, thus marking the natural boundary of the province between the Barima and Amacoora.

"If the right bank of the Barima River were taken as the boundary, and all the extensive creeks which enter that stream on its left bank remain subject to the Columbian State, this Colony would be subjected to the danger of having all the runaways from either Government congregating on that fertile region without the right of control, and it is too distant from the seat of the Columbian Government for its influence to be otherwise than only partially felt, especially as the aborigines look to this Colony for protection.

"If the Wyena were selected as the boundary-line, the evil would be greatly increased by leaving a wider field of operation unoccupied."

A curious fact with reference to Crichton's remarks is that he, as well as many others in the colony, seemed to consider that the question of boundary was a question not of right or of territorial title, but a thing to be fixed by Her Majesty's Government, and about which the Colonial officials had only to make valuable suggestions, which the Government might then carry out. He regards it solely from the point of view of expediency, and it is perfectly evident that, as far as right is concerned, he knows none beyond Moruca either to the Waini, to the Barima, or beyond.

Shortly after this Schomburgk appears on the scene with his scientific frontier, based on the doctrine of "convenient natural boundaries." Schomburgk, as is well known, was employed simply as a surveyor, and Lord Aberdeen expressly stated in the correspondence which followed the erection of his boundary posts that the planting of the posts were "merely a preliminary measure open to future discussion" (V. C., III, 199, 204, 207), and, at the request of Venezuela, they were actually removed. Nevertheless, they had great influence in stiffening up the ideas of all the officials of the colony. Thus, Superintendent King, in 1841, heard that a murder had been committed in

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the Aruka, and in reporting the fact stated (B. C., VI., 112), that he "although this murder was committed *beyond what he always considered to be the limits of British Guiana*, but within the *assumed limits* of Her Majesty's Commissioner of Survey for British Guiana [Schomburgk] felt it his duty to have the body exhumed, and accordingly held an inquest thereon." Here the Superintendent himself traces the direct connection between Schomburgk's "assumed limits" and his own change of mind in reference to the boundary. Such is the effect of the setting up of posts by Her Majesty's Commissioner.

It is this change of mind in 1841 and its consequences which Her Majesty's Government now claim should be taken into account by the Arbitrators in determining the extent of Dutch territories in 1814.

The same change due to the same influences, is noticeable in Postholder McClintock, who says, in a report of December 31, 1848 (B. C., VI., p. 172):

"Your reporter, therefore, with a view to obviate this difficulty, begs leave to suggest now, *as the boundary of British Guiana is defined*, and no likelihood of any interference by the Venezuelan Government, that a Mission forthwith be established on the Bareema for the convenience of the Worrow Indians of that river, and another on the Winey for Accaways."

In accordance with this, he at the same time suggests the names of Indian captains for various localities in that region, namely, Assakata, Waini, Barama, and the Upper and Lower Barima.

Governor D'Urban, in a letter to Lord Goderich, October 18, 1827 (B. C. VI, 39), had already given a suggestion as to the boundaries of the colony:

"On the north, the sea coast, from the mouth of the Abary to Cape Barima, near the mouth of the Orinoco.

"On the west, a line running north and south from Cape Barima into the interior."

The Governor does not seem to have had any foundation for this particular suggestion. As an indication of the way in which

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British Colonial Governors followed the example of their Dutch predecessors in "extending boundaries" by correspondence to a great variety of points, it is extremely valuable. It turns entirely on Point Barima. It amounts to saying: "We will take that; and as for the rest of it, run a north and south line, and there you have the boundary." Such a line of course cuts Schomburgk's zig-zag at every turn, and bears no particular relation to anything in the history of the case.

The suggestion of Governor D'Urban in 1827 is the first that ever was made in the entire history of this controversy of a territorial frontier on the Orinoco River. The Dutch Director-General Storm, with his movable boundaries, had referred many times to the question of limits in the coast territory, and had spoken both of the Waini and the Barima as a possible boundary, his most emphatic statement being that to the Governor of Surinam, that he believed the Spanish were right in claiming the Barima. Storm's ideas, however, of geography were entirely vague, and while he spoke of a line at the Barima, he had no knowledge where the Barima was, while his allusions have reference to some point a considerable distance above the river mouth. Governor-General Sirtema van Grovestins placed the boundary at the Moruca. The Company, and afterwards the Dutch Government, never stated what their claim of boundary was, or even that they had any claim.

The principal suggestions on this subject had come from Storm; but even Storm never in terms or by implication suggested a claim to any territory on the Orinoco River itself. D'Anville's map, to which Storm referred, does not put the boundary on the Orinoco, and the whole course of the correspondence and acts of the Dutch Colonial authorities is such as to indicate that no one would have been more surprised than themselves at a claim of a Dutch frontier on the Orinoco River. To them the Orinoco meant Spain just as much as the Essequibo meant the Netherlands. There never was the slightest doubt or suggestion that jurisdic-

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tion, whatever it was, had been, or could by any possibility be, extended to that river.

At the close of the Dutch period, as has been already stated, in 1802, Major McCreagh reported the existence of five posts, four of them more or less fortified, with garrisons and in command of army officers, on the lower Orinoco, below Angostura, the lowest one being the pilot establishment at the Island of Papagos, opposite the mouth of Aratura, the first branch of the Orinoco above the Amacura and only a few miles from the mouth of the Orinoco itself. The pilot station at Papagos still continued to exist in 1836. In addition, there had been established during this period another post at the Island of Kuriapo, a few miles above Papagos, with a civil functionary in charge, called by the English a "Postholder."

Contrasting the situation between Venezuelan and British Guiana in the Barima, Schomburgk, the most earnest advocate of British boundary claims, and indeed their inventor, says (B. C. VII, 13):

"Venezuela has a Post and a Commandant within a short distance from the mouth of the Orinoco; the post nearest to the western boundary of British Guiana is in the River Pomeroon, a distance of 120 miles from the Amacura; and it follows, consequently, that the Postholder of the Pomeroon *can never exercise his influence or protection over the Indians who are settled on the Barima,* or its tributaries."

As has been already suggested referring to the period prior to 1814, an occupation of a river, such as that of Spain in 1802 of the the lower Orinoco, with the city of Angostura, the four fortified posts below it and the pilot station at Papagos, would be sufficient, when that occupation dates back three hundred years, to settle the question of the title to the river until its waters were lost in the sea. What the British Case could advance in opposition to the title evidenced by that occupation it is difficult to see.

But the British Government itself, by the official act of its representatives, has distinctly disclaimed any title to territory on the

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banks of the Orinoco, and in particular to Barima Point. On May 26, 1836, a remarkable letter was addressed by Sir Robert Ker Porter, at that time Her Majesty's Chargé d'Affaires at Caracas, to the Venezuelan Secretary of State (V. C. III, 189–92). This long document deserves the most careful reading. Sir Robert Porter begins by stating that—

"From a recent correspondence I have held with His Majesty's Consul in Angostura I have to request the serious attention of the Executive to a representation I am about to make relative to the more safe navigation for vessels on entering the principal mouth of the Orinoco."

His Majesty's representative then refers to the dangers to which vessels are subject for the want of proper land and water marks to guide them, and remonstrates on the condition of the pilot establishment on the island of "Papagayos," which as we have seen was already in existence in 1802. He refers to two British vessels that had been wrecked, one on the coast of Barima, the other on a shoal off Cape Barima; one for want of a beacon to point out the proper entrance, the other for want of a pilot. He goes on:

"It becomes my official duty to represent to the Executive of this Republic the indispensable necessity (and that without further delay) of placing a conspicuous beacon on Cape Barima, the point forming the grand mouth of the Orinoco to the south-south-east, where I am given to understand it could be done with the greatest facility, and to the greatest advantage. The object would effectually prove a sure mark, as also safeguard for all vessels seeking proper entrance into this vast river."

He refers to the island of Cangresos (Cancrejo or Crab Island) as forming "the other side of the great mouth," and to the sand-banks, "which reduce the only navigable channel to scarcely three miles in width, which commence on passing the bar, just without Cape Barima." He says: "Buoys ought to be laid down at those particular points" which mark the channel or the sand-banks. He adds: "I am well aware that a pilot-boat was intended to have gone out every day from Point Barima to cruise for vessels bearing towards the entrance of the river;" and he remonstrates with the

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Government for not seeing that this intention was fully and properly carried out. He uses the strongest language in reference to these measures, and says:

"I therefore seize the present occasion in endeavoring to impress upon the Executive the *imperious necessity* of promptly taking stable and energetic measures in the regulation of that which is of such vital importance to the growing trade of Angostura."

He dwells upon the fact that not only in England, but in many of her colonies, merchants are afraid to send their vessels to the Orinoco, in consequence of these dangers, and adds that at Lloyds no insurance can be effected to that river without a very considerable advance. He lays before the Government the protest which "His Majesty's Consul at Angostura . , . found it his indispensable duty to call to the observance of the Governor of the Province of Guayana." He closes by saying:

"I must once more repeat my solicitude that the Minister of Marine be directed to investigate and correct the abuses which have frustrated the good intent of the Government and that Department, and likewise that he be directed to attend to the recommendation I now have the honour of making by placing a proper beacon on the Barima Cape, as also the appropriate buoys in the Orinoco for the safer navigation of it, so that I may be enabled, in a very short time (and I trust the urgency will be seen), to have the satisfaction of officially communicating to His Majesty's Principal Secretary of State for Foreign Affairs (for the information of the merchants interested at Lloyd's) the measures that have been taken by this Government, rendering the great entrance to the Orinoco perfectly perceptible, as also the navigation of the river up to Angostura perfectly safe."

The Venezuelan Government answered on June 15 (V. C. III, 192), that the matter had been called to the attention of the Minister of Marine, and that suitable orders would be given to carry out the undertaking.

Not content with his previous communication, Sir Robert Porter again, on September 14, 1836, recurred to the subject. (V. C. III, 192). He said:

"I seize this opportunity (as in some degree connected with my subject) to request you will inform me (for the information of my own Govern-

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ment) whether anything has yet been actually done as to erecting the light-house or beacon which I pointed out to the Government (many months ago) as absolutely necessary at the Boca Grande of the Orinoco."

Here is as strong an admission as could be made of the exclusive territorial dominion of Venezuela over not only the mouth of the Orinoco, but specifically over the territory on the right bank, both of the Orinoco and of the Barima at Barima Point.

The light-house was not erected at the mouth of the river, although in consequence of the request of Sir R. Porter, an Act of the Congress of Venezuela, approved May 11, 1842, provided for its erection (V. C.-C. III, 165). A light-ship was, however, established by the War and Navy Department of Venezuela, between Sabaneta and Barima Points, shortly after the passage of the Act. This light-ship was in place in 1846, and is mentioned by Sir H. Barkly in 1850 (B. C. VI, 183). The light-ship was established and maintained by the keeper Moron under a contract with the Venezuelan Government (V. C. III, 185).

In 1887 Venezuela decided to accede to the request which had been so urgently pressed by the British Chargé d'Affaires and replace the light-ship with a light-house on Point Barima; whereupon the Foreign Secretary, the Earl of Iddesleigh, wrote, January 12, 1887, to Mr. St. John, British Minister at Carácas (B. C. VII, p. 118) directing him to "inform President Blanco that the request by the British Consul for the erection of such a light-house in 1836, to which his Excellency referred in conversation with you as justifying the intention which he announced, was unknown to and unauthorized by the British Government of the day."

This extraordinary repudiation of the demand of its own representative, made half a century before, would seem, to say the least, to show a certain laxity of correspondence in the British Diplomatic Service of that period which is worthy of remark. The officers of this Service, it appears, did not hesitate to make the most pressing and urgent demands—in fact dictatorial would

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not be too strong a word—of the Governments to which they were accredited, not only without any authority, but even without conveying to the Foreign Office any intimation that such demands were being made.

It appears, however, that in 1842 the Foreign Office was informed of Sir Robert Porter's demand and actually received copies of the entire correspondence. Mr. O'Leary, his successsor at Carácas, having referred to the correspondence, was directed by the Foreign Office to send a copy of it, which copy he sent, accompanied by a letter of September 1, 1842, which was marked at the Foreign Office as "Received October 14." Mr. O'Leary's letter, together with the correspondence between Sir Robert Porter and Señor Gallegos is to be found in B. C. VII, 82.

Apart from the Minister's failure to report action, however, in which Her Majesty's Government in 1887 saw fit to take refuge, the mere fact that Sir Robert Porter made the request, either authorized or unauthorized, is one the significance of which cannot be questioned. Lord Iddesleigh stated that the request had been made by "the British Consul." This was apparently an inadvertence, as it is stated by the British Counter-Case (p. 127) that "the request referred to was made by Sir Robert Ker Porter, the British Chargé d'Affaires at Caracas, on the suggestion of the Vice-Consul at Angostura." As such, he was the Diplomatic Representative of Her Majesty's Government.

Sir Robert Porter was the Minister of Great Britain in Venezuela. He, if anybody, was familiar with the question of the boundary. It is not to be supposed that the British Minister in Venezuela could be entirely ignorant of the claim of his government, if claim there was, as to the frontier between the possessions of his own country and those of the country to which he was accredited. He could not have failed to know whether his government placed the frontier at Pomeroon, where its post was, or at the Orinoco, where the Venezuelan station was, one hundred and fifty miles along the coast to the westward. If his Gov-

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ernment claimed the Orinoco mouth and Point Barima, he would be the first man to know it; and his request, or rather his demand, an immediate reply to which he desired for transmission to the Secretary of State for Foreign Affairs, which demand necessarily implied a recognition of the sovereignty of Venezuela over that very point, is a committal which the British Government cannot repudiate, whether this or that particular office, secretary or clerk was aware of it or not, certainly not after the lapse of fifty years, when in the meantime it had been "for topographical reasons" extending its territorial claims. Still less can the British Government take refuge in its failure to repudiate Sir Robert Porter's act, when its own published correspondence proves that the Foreign Office was perfectly cognizant of the act and of all the surrounding circumstances in 1842, and that the document received on October 14 of that year is in its archives. Knowledge, it is true, is not brought home by the papers to what Lord Iddesleigh calls "the Government of the day," but it is brought home to the Government of six years later. The letter of Sir Robert Porter represented the matter as of vital importance to British commerce and to British interests; that until the lighthouse was erected, British ships could not get insurance for the Orinoco, and that its absence practically put a stop to their trade in that locality, and had caused the wreck of two valuable ships a short time before.

According to Lord Iddesleigh's theory, the obligation which Sir Robert Porter had represented in such emphatic terms as resting upon the Venezuelan Government for the protection of British interests was an obligation that really rested upon the British Government for the protection of its own interests. Yet what did the British Government do after its attention was called to this matter in 1842? Did it build a lighthouse? Did it say to Venezuela: "This is our territory. Of course we want a lighthouse, and our representative made the mistake of addressing the demand to you. We beg your pardon. We did not intend that

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he should make such a demand on you, because, of course, it being our territory, it is our duty to build the lighthouse, and we should reimburse you for any expense you have incurred on account of our unwarranted demand." The British Government did nothing of the kind. This was eight years before the Agreement of 1850, and nothing stood in the way of action; it was at the very time when Schomburgk's posts were the subject of protest and disclaimer; yet the Government chose to leave their position in Venezuela defined by Sir Robert Porter's demand for the construction of the lighthouse, never withdrew it, never modified it, never suggested that their representative had been in error, and by their inaction left the demand as it was when it was first made. The case was peculiarly one where inaction involved acquiescence, for the knowledge was brought home to the Foreign Office itself that its Minister had made a demand for a public work, involving large expense to Venezuela, as being a duty that Venezuela had to perform, and it had further notice from its Minister, Mr. O'Leary (B. C. VII, 81), that the Vénezuelan Government were acting upon it, and had passed a law for the erection of the light (May 24, 1842). Her Majesty's Government also knew that, in compliance with Sir R. Porter's request, the Venezuelan Government had gone to the expense of establishing and maintaining a lightship at Barima Point, where it has been maintained ever since. Great Britain cannot, in 1887, be permitted to say: "The demand was unknown to the Government of that day, and therefore we are not bound by it.' It was known to the Government of 1842. It was acquiesced in by that Government, because it was never withdrawn and Venezuela was left to suppose that, in the view of the British Government, it was bound by the obligation of a riparian proprietor to commit itself to that expense.

Sir H. Barkly, Governor of British Guiana, in a letter of September 20, 1850, to Earl Gray (B. C. VI, 183), states that he

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had called for a report from Superintendent McClintock as to whether any movement had been made by the Venezuelan authorities having in view the occupation of any portion of the territory comprehended within the Schomburgk line.

As the Superintendent stated that he had not lately traveled as far as the Orinoco, which was two hundred miles from Pomeroon (as far as the evidence shows, he had not been there for six years), the Governor himself made an examination. He stated that their nearest settlement was Cariape [Kuriapo], on the Orinoco, 30 or 40 miles beyond the Amakuru. Another post was higher up at Barrancas. He does not mention the pilot station at Pagayos, which was much nearer, doubtless because he only referred to settlements. He also stated that a lightship had been established off Point Barima, "for the purpose of guiding vessels entering the Orinoco, here 14 miles wide." According to Sir R. Porter, the channel was three miles wide, but the hydrography of the Orinoco was better known at Caracas than at Georgetown.

In reference to the lightship, Sir Henry Barkly stated that "this project was doubtless substituted for that of a lighthouse, which it was formerly proposed in the Venezuelan Chambers, to build on Point Barima, in the teeth of our pretensions to its possession." This is rather hard on Venezuela, seeing that the action which was so well described as "in the teeth of our pretensions" had been not only proposed, but demanded by the British representative himself. It only shows, however, that the Colonial Governor was deplorably ignorant of the action of Her Majesty's Legation in Venezuela on the boundary question, an ignorance which he had shared with the Foreign Office, it is true, but which had not existed at the Foreign Office since 1842. Moreover, it is quite possible that "our pretensions" had attained an extraordinary and rapid growth between 1886 and 1850, for which the intervening visit of Schomburgk and his rectification of the frontier were no doubt responsible.

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Sir Henry Barkly also stated:

"As the ship is moored a mile or two from the shore, and is owned, as stated to me, by private individuals trading from Angostura to the ports of this Colony, I am not aware that it can be considered any disturbance of the *status quo* on the part of the Venezuelan Government, though it may be advisable to instruct Her Majesty's Chargé d'Affaires to obtain explanations on the subject."

Sir Henry's error in reference to the private character of the lightship was no doubt due to the fact that the lightship was established and maintained by a keeper under contract with the Venezuelan Government. It was none the less, however, a Venezuelan establishment, maintained at the very mouth of the Orinoco and "moored a mile or two from the shore." As such it was and is a clear mark of Venezuelan sovereignty at Point Barima, and if the British claimed Point Barima, Sir Henry was right in saying that it was "advisable to instruct Her Majesty's Chargé d'Affaires to obtain explanations on the subject."

The British Government, however, notwithstanding Governor Barkly's "pretensions" to Point Barima, notwithstanding the significance of the Venezuelan lightship, moored a mile or two from the shore, and notwithstanding the overwhelming importance to British commerce of the maintenance of the light, never, so far as the evidence shows, took the step which the Governor recommended. As in the case of Sir Robert Porter's request it made no disclaimer, so in the case of the lightship it made no protest, and the lightship has remained there for fifty years.

The position of the British Government, therefore, both in the Foreign Office and in the Colonial Office, by the tacit approval of Sir Robert Porter's request and by acquiescence in the establishment of the lightship in consequence of it, has amounted to a clear disavowal of any right to Point Barima. Nor up to 1850 had it ever in any official correspondence made any such claim.

The reasons stated by Sir H. Barkly for insisting upon Point Barima are that it is essential to British interests: first, that the

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coasting trade of the colony would be at the mercy of any Power whose privateers should rendezvous in the Orinoco during a war; secondly, commercial intercourse between the Orinoco and the British West Indies would be restricted to what would be carried on by the colony of Trinidad through the western channels of the Orinoco; thirdly, the supply of cattle (which was an important product of the Orinoco) would be cut off.

The importance to Venezuela of being able to control the mouth of its own river is not considered.

Perhaps the most important point referred to in Governor Barkly's letter is one mentioned in connection with Lord Aberdeen's offer for settling the boundary question by a line starting at the Moruca (Br. Atlas, Map 4 C.-C). "This offer," says Governor Barkly, "may have been influenced" by "Governor Light's confidential report of the 4th March, 1842" (B. C. VI, 183).

It is evident that the confidential report of Governor Light, of 1842, which, according to Sir Henry Barkly, may have influenced Lord Aberdeen to fix Moruca as the boundary, is a document of very vital moment in this controversy. Nevertheless, it nowhere appears in the British Case. That Case has chosen to leave its contents to the inference that may be drawn from Sir Henry Barkly's reference to it. The inference, which is inevitable, is that Governor Light's confidential statement was conclusive to the British authorities as to the western limit of their territories at Moruca. The Arbitrators have a right to infer from the condition in which the evidence is left by the British Case that such was the tenor of Governor Light's report. The inference could only be avoided by the production of the letter itself, which Her Majesty's Government has not chosen to print.

Venezuela, however, was taking control of this matter for herself. At this time a Venezuelan post was maintained at Kuriapo, one of the islands in the lower Orinoco, a few miles above the pilot station and the mouth of the Amakuru. The Venezuelan officer in charge of this post made frequent visits to Barima. The British

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records, which refer to him as the "Postholder of the Orinoco," twice mention his presence even at Moruca. Superintendent King said, in 1840 (B. C. VI, 94), he "met here Francisca Rodriques, the Postholder of the Oronocco"; and McClintock, in 1843 (B. C. VI, 127), remarked upon the fact that he "was visited by José Rodinze, Postholder of Corioppo, a village in Rio Oronoko."

Not only that, but the policy which had been initiated and pursued with such vigor by the Spaniards of keeping a patrol boat in Barima was continued by Venezuela.

On December 10, 1840, Superintendent King reported as to the Venezuelan gunboat in the Barima, enclosing "a statement made by Juan Pirel, who is now in Georgetown, together with some others from the Venezuelan territory, by which statement you will perceive the gunboat is on the eastern side of the Barima River, *and which river is our boundary*" (B. C. VI, 99).

This statement as to the boundary by the Superintendent of Rivers and Creeks was made just before Schomburgk had developed his boundary theory.

He added:

"Some time ago the gun-boat did seize some corials, but these belonged to persons from the Orinoque, and were taken in the Barima, therefore I did not report the circumstance, *it being beyond my jurisdiction.*

"The last seizure by the gun-boat was in the Mora Creek, and some of the inhabitants of Morocco were taken prisoners by the Commander of the gun-boat and carried to the Orinoque.

"You will also perceive, by the statement herewith sent, that the Commander of the gun-boat thinks he has still a right to come more to the eastward.

"I would feel obliged by your informing me whether I shall, for the future, endeavor to prevent all persons, whether Indians or others, belonging to the Venezuelan territory, from entering our territory without a pass."

It is to be noticed that the very important answer from the Government Secretary to the above letter is also omitted from the documents annexed to the British Case, although it is a document

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to which Her Majesty's Government alone has access. As to what position was taken by the Colonial Government upon this direct inquiry of a most important character, which necessarily must have had an answer, and the answer to which is in possession of Great Britain, no information is given.

McClintock, Postholder in Pomeroon, reported the same circumstance (B. C. VI, 105):

"Your reporter, having received directions to send in a quarterly Return of all the Indians in his district, he proceeded first to Morocco, and while preparing himself for that duty information was lodged that a Spanish gun-boat was stationed in the Barima River, convenient to the mouth of the Mora Creek, and that two Spanish Indians attached to the Morocco Mission were made prisoners, and their corial and a variety of small goods taken from them.

"Your reporter, on the receipt of this information, prepared himself to go to Barima, but on reaching the Baramany Creek your reporter met one of the said Spanish Indians on his return to Morocco, who stated that the gun-boat had already started for Augostura, which prevented your reporter proceeding further than the mouth of the Waini River."

From the way in which this episode is referred to in the evidence annexed to the British Case, it may be inferred that no protest was made against the acts of the Venezuelan gun-boat.

In 1841 a Warow chief from the Canyaballi was reported by Schomburgk (B. C. VII, 11) as rejoicing "that at last it should be decided whether the Waini was in the British or in the Venezuelan territory, as at present they did not consider themselves secure against being carried away by the Venezuelans, and forced to work at low wages at Angostura."

Schomburgk also stated (B. C. VII, 14) that the Commandant of the Orinoco had taken some Indians from a place between the Amakuru and Barima a short time before to Coriabo [Kuriapo]. Of course Schomburgk listened to all that Indians had to say about Spanish cruelty, &c.; but the important point is that a Spanish official, according to Schomburgk's testimony, was exercising control in the territory in question.

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Schomburgk, who was gathering all the information he could that reflected on the Venezuelans, again unconsciously bears testimony to the presence of Venezuelans in the Barima. He says (B. C. VII, 12): "Many of these Indians [in the Aruka] had to relate acts of cruelty committed by the Venezuelans." This shows that the Venezuelans in 1841 made a practice of going to Barima, although the place was entirely deserted by the British.

Whatever the above facts may be said to show as to Venezuelan control, they clearly negative the existence of British control in the coast territory. They afford proof, however, that the Orinoco was held and actively controlled down to its very mouth by the presence not only of the five posts mentioned by McCreagh, but the additional post of Kuriapo and the Venezuelan light-ship at the mouth of the river, which had been placed there in compliance with the request of the British representative to build a lighthouse on Point Barima. They show further that the Commandant at Kuriapo exercised an active control over the Indians in Barima, and they show the presence of a Venezuelan gunboat in the Barima River itself, apprehending Indians residing at Moruca and confiscating their goods. They fail to show—and this failure is in its way as significant as the affirmative proof—that Great Britain, having official knowledge of each and every one of these facts, all of them occurring before the Agreement of 1850, made any protest whatever in reference to them or took the slightest notice of them.

It appears also that the Venezuelan Government did exercise control in the lower Orinoco, and that it had the civil head of its lower settlements on that river, called by the British, by analogy, a "Postholder," visiting even the Barima, and that its coast-guard vessel, as during the Dutch period, was patrolling the river Barima. Under these circumstances, it would seem that, entirely apart from the question whether the Treaty does or does not take cognizance of acts of dominion by the British during their possession of British Guiana, there were

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no such acts, and that the lower Orinoco and Barima remained, as they had always been, an acknowledged part of the territory of Venezuela.

It may be well to note the fact that certain Spanish Indians left the Venezuelan settlements during the revolution and came through the Barima to Pomeroon, which was evidently at that time regarded as the frontier of the English settlements. Their arrival is referred to in a letter of Governor John Murray, dated August 14, 1817 (B. C. VI, 7) to the "Second Fiscal":

"Having received information from the Postholder in Pomeroon that a considerable number of Spaniards, inhabitants of Oronoque, have arrived there with a view to remaining in this Government, I have to request that your Honour will be pleased to take measures to prevent these people from extending themselves on the coast between the Pomeroon and Essequibo Rivers, at the latter of which rivers I have directed that they should remain until further measures respecting them may be adopted."

These Spaniards were fugitives from the Province of Venezuela, which was now under a revolutionary government. Arrangements were made to send 100 of them to Porto Rico, at the expense of the Spanish Government. According to the Minutes of the Court of Policy, October 28, 1817 (B. C. VI, 8).

"Those still left at the Post requested leave to remain until they could return, which they would do as soon as means would be found to take them back to Oronoque, so that a speedy prospect might be entertained that the Colony would soon be entirely freed from them."

The Minutes of the Court further say, October 30, 1817 (B. C. VI, 8) that

"His Excellency stated to the Court that he had received a despatch from Lieutenant Mitchel, containing the information that twenty out of the Spanish refugees left at the Post had quitted to return to Angostura, and that the rest were then preparing to follow, so that it was probable by this time the whole had left the Colony."

It appears from the above that the limits of the colony at that time were considered by the Governor and by the Court of Policy to be fixed at the Pomeroon.

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A few of them, however, remained, and, in 1834, Governor Smyth made a grant, to certain officials of the Colony as trustees, of a tract of land on Moruca Creek, for the purposes of a church for the Spanish Indians who had temporarily established themselves at that point (B. C. VI, 54.).

The fugitives seem, however, to have rapidly disappeared. A memorandum, apparently of 1838 (B. C. VI, 62), stated to be by the missionary at Moruca, says:

"In the Mission of Morocco there are now no more than ten or twelve Indian families residing."

Of the others, some had gone back to Orinoco, others were working in Pomeroon and Essequibo.

In 1839 the Roman Catholic Pastor of the Morocco Mission says:

"In the aforesaid rivers [Waini and Barima], all Roman Catholics. * * * The captain of the Waycos, named Juan Ventura, is a Spaniard, and himself, and almost all his tribe, are Roman Catholics. In the only one creek of Bareema which I visited I met the Catholic captain and most of his tribe."

He adds:

"The population of Morocco Creek can be estimated at least at 600 adults, of both sexes, almost all Spanish" (B. C. VI, 64.)

Postholder McClintock reports, in December, 1846 (B. C. VI, 146) that the Waramuri Hill Mission, which had been established by him at Moruca, had been for several months past totally neglected.

In 1847 Postholder McClintock reports (B. C. VI, 165) that the Waramuri mission is no longer a mission, "but once more mingled with the wilds. The Indian cottages are abandoned, and all the buildings more or less destroyed by wood ants, and should the place be undisturbed by the hands of man for three months longer, a stranger passing that way would be at a loss to discover the spot on which the once famed Waramury Mission stood."

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In March, 1849, Superintendent McClintock reports that the Waramuri Mission has been re-established (B. C. VI, 173). He also says that the Santa Rosa Mission in 1840 had 336 Spanish Arawaks, but since then they have gradually decreased, not by death, but by return to the Orinoco, particularly of late.

From Superintendent McClintock's report of March 31, 1850, it seems that the missions at Pomeroon and Moruca were then in a deplorable condition (B. C. VI, 177–8).

In a report of September 30, 1853 (B. C. VI, 194), Superintendent McClintock again refers to the condition of the missions on the Moruca, stating that the roof of the Waramuri church has fallen in and that another winter will destroy every inch of it; "in other respects, the Mission has all the appearances usual in abandonment, and the same observations are applicable to the St. Roses Mission, for, although the church is not actually down, it is not far from it."

Whatever the facts may have been with reference to Spanish Indians, their settlement at Moruca has no bearing upon the question of the disputed boundary.

It appears from the above that in the coast territory, as in the interior, there was no settlement, no post, no jurisdiction, and no control, west of Moruca by the British.

There remains only one question to consider, and that is the contention on the part of Her Majesty's Government in this case that their relations with the Indians of Barima (for there were no relations with the Indians of the interior), during this period, were in some way the foundation of political control. The question how far such relations can establish political control, has already been fully discussed. It only remains to be seen whether the acts of the British in this respect changed in any degree the situation referred to in the previous discussion in this argument.

It is contended in the British Case that the authorities of British Guiana were active in the same directions as their Dutch predecessors, and that by reason of their maintenance of the peace,

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their employment of the Indians, the military services which the latter rendered, the presents which were given them, the appointment of chiefs, and jurisdiction of offenses committed by Indians, they established a species of political control over the inhabitants of the territory.

During the early part of this period the policy of the Dutch of maintaining their relations with the Indians by the distribution of gratuities and presents, in which, as before, rum was one of the largest items, and which it is also contended was an evidence of political control, was continued by the British authorities. The immense number of negro slaves in the British colony, which had passed to it from the Dutch, was a constant menace. In 1813 Indians were employed for several weeks in repressing a disposition on the part of the negroes to revolt. These were rewarded by a gratuity of 3,500 f. (B. C. VI, 4).

The cost of the annual presents to the Indians was a heavy burden upon the resources of the colony, but the necessity of being able to hold in check the negro slaves by fear of the Indians was such that the amount was paid without a murmur. It was in fact not a tribute paid by the Indians for protection, but a tribute paid to the Indians for protection, and it justified Acting Governor Codd in making the statement already quoted (B. C. V, 216), in his letter of September 26, 1813, to Earl Bathurst:

"It is, however, obvious that our Colonies are tributaries to the Indians, whilst the proper system of policy would be to make them allies, looking to us for protection; and whilst living within our territories, affording them such aid as we might conceive they deserve."

He added the significant phrase:

"The quantity of rum and sugar issued tending to render them almost useless, for my part, I think the whole present Indian system requires to be reconsidered."

It is evident that at the date of this letter, in 1813, there was no such relation between the British Colonial authoritities and the Indians as could be made the foundation of a claim of political control.

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In the same letter the Governor says that the expenses connected with the Indians amounted in 1811 to £6,904 and in 1812 to £5,112.

In view of the extremely sound conclusions which the British Colonial Governor draws from the fact of the subsidy, it is curious that the British Case should dwell upon it as an evidence of political control. It states (p. 105):

"The expenses of the Indian subsidy which was annually voted was considerable. In 1811 the Governor undertook to contribute 18,000 guilders and the Court of Policy 12,000 guilders of the probable cost, and in November 1812, while not limiting the amount to any specific sum, the Court of Policy were recommended to, as far as possible, restrict the expenditure under this head to a sum not exceeding 20,000 guilders per annum. By the year 1831, annual sums were still voted for the rations and gratuities given to Indians at the Posts, and the general distribution of presents had become triennial. The expense in every four years was estimated to be £6,600. In 1833 the general distribution was omitted, and the Court of Policy voted a sum of 30,000 guilders for the purpose in the following year."

On August 1, 1834, the emancipation of the negro slaves took place. Those in Pomeroon took the proclamation quietly, and agreed to do nearly the same work as formerly (B. C. VI, 56).

All danger of a negro revolt now came to an end, and the practice of giving presents to the Indians immediately ceased.

The effect of this became speedily apparent. The British Case states (p. 105):

"In 1837 the Court of Policy decided that it would no longer defray the cost of the distribution of presents by the Postholders, and in 1838 Governor Light spoke of the Indian subsidy as entirely discontinued. In consequence of this by the following year no Indians were to be found residing at the Posts who could be considered as attached to them."

Hadfield, Superintendent of Rivers and Creeks, in a report dated October 26, 1839, says:

"It may, however, be not remiss to remark that, previous to the enactment of the Ordinance appointing Superintendents of Rivers and Creeks, the Indians who chose to reside at the Posts were supplied with

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plantains, salt fish, rum, &c., and presents of small articles, such as gunpowder, knives, looking-glasses, beads, combs, &c., were periodically distributed amongst all the Indians that chose to assemble at the Posts on such occasions, which induced many of them to attach themselves to the Posts, or locate in the vicinity, whose services could be obtained at an easy rate by the Postholders, as well for the purpose of conveying them from place to place, as the erecting and repairing of buildings. But now no such encouragement is given them, and the consequence is that not an Indian is to be found at any of the Posts who may be considered as attached thereto" (B. C. VI, 87).

The Essequibo settlement shortly began to feel the effects of emancipation on the labor problem and on the Indian question. Postholder McClintock, in a report of that year (B. C. VI, 141) comments on "the general indisposition that prevails among all classes on the sugar estates of the Arabian Coast," and mentions the fact that the Accaways of Waini and Barima have destroyed their habitations and gone to reside in the upper parts of the Cuyuni and Massaruni, doubtless still preserving in their Creole Dutch vocabulary the recollection of the "rum, gunpowder, &c.," with which they were formerly suppled at the Post.

The necessity of obtaining labor led the colonists to turn to the Indians, and few of these being left about the post at Moruca, they employed all those who came to them for employment from remoter districts. These Indians, many of whom lived about the Barima and its tributaries, did not give up their homes and settle in the neighborhood of the plantations where they worked or at the post of Pomeroon, but they came for short periods of time, and when the work was over returned to their homes. The colonists took advantage of their ignorance to bind them by oppressive contracts and to get the better of them by the quality of the goods in which the services were paid. To correct these difficulties, regulations were framed by the Colonial authorities to the effect that the Indians "could not be forced from their homes by any person or persons from Pomeroon to work as labourers without their own free will and consent, and that if they were ill-used

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or paid less than they might have agreed for, they must make their complaints known to me [the Superintendent of Rivers and Creeks] upon my arrival in the river [Pomeroon], when their case would be attended to" (B. C. VI, 71). With the object of carrying out these regulations, the Superintendent of Rivers and Creeks went to Pomeroon to hear complaints; not only that, but he extended his journeys into the territory west of the Pomeroon and visited among the Indians, inviting them to make any complaint they desired of the settlers by whom they had been employed (B. C. VI, 65–75, 94–99).

The practice of making these visits was continued only for two or three years, and seems finally to have come to an end in 1844, when McClintock made his last journey in the district.

Even the Colonial officers were charged with gross injustice in the matter. Superintendent King reported in 1840 (B. C. VI, 97):

> "Several Warrow Indians complained that they were greatly imposed upon by the people at Pomeroon by making them work for them, saying that the *Governor or Superintendent* sent for them, and that when they went out they made them work."

This is in line with the statement of Hilhouse, the Quartermaster-General of Indians, in November, 1823 (B. C. VI, 24):

> "The Indians employed have had their payment withheld till they are exceedingly dissatisfied, and the faith of Government sacrificed to the inactivity of individuals."

That the officials of British Guiana might be found accusing the Spanish of ill-treating the Indians would not be surprising, and their statements based on the reports of Indians on that subject are of course hardly admissible as evidence. But these last statements are admissions against interest, made by these officials themselves, and offered in evidence in support of the British Case. They throw a curious light upon the allegation made in the Case itself (p. 108) that "any attempt to compel the Indians to enforced labor, under any pretext whatever, was sternly checked."

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The number of Indians so employed does not seem to have been very large. Superintendent McClintock reports June 30, 1850 (B. C. VI, 181), that out of 4,000 Indians in Barima and Waini, "100, and no more, is about the average that repair to the sugar estates in search of work."

No conclusion can certainly be drawn from the above facts as to the maintenance of political control, except that perhaps they may account further for the use of the Creole-Dutch language in Barima, which the British Case seems to contend is an evidence of such control. The fact that planters hired the Indians to work, and that when they ill-treated the Indians and failed to pay them their wages or paid them in inferior goods, the Colonial authorities took cognizance of the fact and compelled the planters to live up to their contracts, is not an exercise of control over Indians. Any Spaniard living in Angostura or in Caracas, any foreigner in short, might have worked for the planters on the same terms and had the same privilege of a judicial cognizance of his complaint. The fact that the Colonial authorities afforded through their courts a remedy in such disputes is no evidence of control over the Indians any more than the mere fact of employment is an evidence of such control.

The mode of treatment of the Indians by the Dutch and by the British, following the Dutch example, during the first half of the century is in strong contrast to that adopted by the Spanish, and numerous citations may be made from the evidence to show this difference, entirely on the authority of English official observers.

Quartermaster-General Hilhouse describes the great influence which the Spanish missions had had upon the Indians, showing that it had accomplished what Dutch influence had entirely failed to accomplish. He says (B. C. VI, 33):

"The Jesuits of the Missions, prior to the political disturbances in that quarter, had brought them to such a state of comparative discipline and civilization as even to reclaim them from their natural propensities as

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hunters, and induce them to cultivate the soil. The superior cultivation of the refugee Spanish Indians in the Morocco Creek is a proof of this.

"Their capacity for discipline was such that they acted in regular bodies in support of the regular troops in the cause of the Royalists, and their attachment to the Government was such that, on the breaking out of the trouble, great numbers emigrated rather than acknowledge the growing ascendancy of the patriots."

Mr. Hilhouse had been Quartermaster-General of the Indians, and probably knew as much about them as anybody else in the colony. He says, in 1834 (B. C. VI, 52), in describing the Indians who came from the Spanish missions:

"To the credit of these people be it spoken that for twelve or fifteen years, the period of their first emigration, I have not heard of a single instance of those disgraceful atrocities that daily characterize the Colonial tribes, notwithstanding the Post of Pomeroon has been till within the last few months conducted to my certain knowledge with a laxity of probity and discipline, disgraceful to the Colony and enough to corrupt the morals of all within its influence.

"Of the Arawaaks and other tribes in the district of the Pomeroon Post I can only say that the last ten or twelve years has reduced them to a state of mental and physical degradation which has no parallel in any other European possession.

"The task of civilization if not utterly hopeless must be very slow with them."

This painful contrast between the effects of Spanish and British influence over the Indians, is a part of the evidence adduced by the British Case.

The quarterly return of the Postholder of Pomeroon, dated September 30, 1833 (B. C. VI, 50), shows the movements of Indians about the post. It also indicates the prevailing source of demoralization. The usual memorandum with reference to the Indians calling at the post is that they received "refreshment." "On one day six Indians left the post on leave for the recovery of their health." It is to be supposed that these matters are put in evidence as proof of political control. Certainly if rum could bring it about, all that the Dutch left to be accomplished in the way of political control was completed by the British—at least as to the

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Indians that hung about the posts until they were obliged to leave "for the recovery of their health."

Superintendent McClintock, in a report of September 30, 1850 (B. C. VI, 184–5), discloses with conclusive sharpness the source of the influence of the English upon the Indians. He says that during the days of slavery the population of the colony considered it necessary to gain, no matter how, the affections or good wishes of the Indians, "which, to a considerable extent, was accomplished by an annual distribution of presents; but the free use of rum to them who called at the respective posts cemented still tighter the bonds of friendship."

"This authorized system of demoralization, if he may be allowed to call it by that name, that is to say, the unlimited distribution of rum, was practised at every Indian post throughout the province, and, in a manner recognized *as one of the then laws of the land*, in which light it was continued to be viewed until freedom to the Blacks was proclaimed; but no sooner had this magnanimous boon been granted (which in one respect was equally beneficial to the poor Indian, for the then deleterious system of giving them rum ceased), than those very people (the Indians) were, but in an indirect way, cast off, the Whites telling them: We no longer require your assistance, no more presents will be given, no more rations of fish, plantains, &c., issued, in a word, the negroes are free, and you can withdraw from the posts and return again to the wilds."

In connection with the above statement of Superintendent McClintock, a faithful official, than whom no one had better means of knowing the relations of the Colony with the Indians, it is beautiful to read the statement of Mr. Schomburgk, made in his letter of October 23, 1841 (B. C. VII, 33), in answer to Governor Light's inquiry "upon what grounds I claimed, in Her Britannic Majesty's name, the right of possession of the River Barima and the eastern bank of the River Amacura as the western boundary." He said:

"Great Britain has been partly actuated by philanthropical motives to see the boundaries of British Guiana determined, in order to afford protection to such of the Indian tribes as live within her boundary, and the comparatively few who remain of that interesting portion of her subjects look

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with the greatest expectation for the moment when they may consider themselves secure against the arbitrary measures of unprincipled men."

Mr. McClintock's objection in 1871 (B. C. VI, 212) to Venezuelan occupation was less philanthropic:

"To say what would be the result in case the Spanish obtained a footing in Marucca is easily stated. Rum and other spirits would be introduced from the Oronoko in large quantities. Retail spirit shops would be established at the mouth of Marucca and at other places, which would interfere very materially with the revenue at present derived from that source."

The objection here is not to Venezuelan practices, but to the effects of commercial competition upon similar British practices.

Two other quotations may be given, one referring to an earlier, the other to a later period. The first, made by Hilhouse in a report of 1834, advocating the abolition of all the posts except that of Pomeroon, the retention of which he advised on the ground that it was a frontier post, predicted the results to the Indians of the policy then pursued by the Colony. He said (B. C. VI, 53):

"Beyond this the experience of seventeen years and a most intimate acquaintance with the Indians, under every circumstance, public or domestic, convinces me that all the other Posts are decided public nuisances; extra agencies without an object, except the annihilation of the Indians be such. I would recommend their immediate abolition, the nearest Burgher Captain being substituted in their charge as Protector, since as long as they are kept up all attempts at civilization must necessarily fail."

The second citation is from an equally good authority, Mr. McTurk, and of a comparatively recent date, namely, 1893. It contains the fulfilment of Hilhouse's prediction. Mr. McTurk says (B. C. VII, 333):

"The Indian population of the lower part of this district is dying out fast,"

And he adds:

"The primary cause of the great increase in the mortality among the Indians has been the liquor traffic at Bartica,"—

a traffic conducted immediately under the vigilant eye of Mr.

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McTurk himself, whose official residence, Kalacoon, was on Bartica Point.

In reference to maintenance of the peace, the Indians appear to have been so thoroughly demoralized by their contact with the Dutch and British settlements that they showed very little further disposition to engage in wars. Upon one occasion hostilities were threatened between two tribes (B. C. VI, 37), and the British Postholder succeeded in bringing about a reconciliation. There is nothing, however, to show that this was in any respect an exercise of control or other than a purely voluntary arbitration.

There does not appear to have been any employment of the Indians for military purposes after 1814.

Much is said about so-called Enrolments of Indians. These were simply memoranda that were kept by the Postholders on the frontier of the tribes in the neighborhood. Several of them are given in the testimony annexed to the British Case (for example, B. C. VI, 12–3). Nearly all of these were Indians who lived on the Essequibo or on the Cuyuni and Massaruni rivers below the falls, as is shown by the short distance from the Massaruni post at the mouth of the river. Another group is credited to Cuyuni and Massaruni and at a sufficient distance to indicate that they were beyond the falls; but the note in reference to these is as follows:

"These people are in general a trading and wandering tribe. They go every year to the Spanish Savannah and Settlements; to the Macusse and Adray nations as soon as their cultivation grounds are prepared and planted."

The memorandum and its accompanying entry would seem to imply that the relation of these nomadic tribes was much closer to the Spaniards than to the British, yet it is an entry on a so-called "Enrolment" of Indians.

As to military service, Hilhouse stated in his testimony at the trial of Billy William (B. C. VI, 41), that a treaty had been

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made by the Colony with the Arrowacks, Warrows and Caribs, and he added:

"I have only understood the Treaty to be as retaining them as soldiers in the defence of the Colony, that they obey all calls of the Colony for service, in consequence of which an allowance is made every three years which they consider as a retaining fee. I think it is the only tie—they look on it as subjecting them to serve when called on solely as allies. There is no clause I have heard of calling on them to submit to the laws in other respects."

There was no restraint upon the movements of the Indians. They moved about in or out of the district as they pleased. Thus, in 1845, Postholder McClintock reports a general movement of Accaway Indians from the coast district of Barama to the Cuyuni (B. C. VI, 142.)

Great stress is laid upon a supposed jurisdiction exercised by the British over the Indians in civil and criminal matters. In regard to this we have a very important statement, made as late as 1831 by one who surely should have known, as he was a "Protector of Indians," and had been for forty years in the Colony.

This was Van Ryck de Groot, who testified at the trial of Billy William, as to the scope of his duties. He says (B. C. VI, 41):

"If an Indian made a complaint to me I should act as a mediator, not as a Magistrate. If the injuring party did not choose to appear, I should not feel myself authorized to compel him to do so. In their quarrels I should consider that I had nothing to do unless they called on me as mediator; there is no order not to interfere, nor the contrary; on a grant the grantee is ordered not to molest the Indians, but to cultivate friendship. I give presents in the name of the Governor to the Indians, they are a retaining fee for their fidelity and friendship, the presents are not ever wilfully neglected, they may be withheld by accident, the Indians consider them as presents to them as friends and allies, not as subjects. I do not know they have any mode of recording events or any substitute for writing; any compact between them and us is oral only."

The above statement shows clearly the nature of the so-called "jurisdiction" of British Colonial officials in disputes

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of Indians. The occasions on which any such settlement of disputes is referred to are very few in number. There was nothing in the nature of a court or process in connection with these settlements. As indicated by De Groot, they were cases of voluntary submission to arbitration. This seems to be admitted by the British Case, which says (p. 101):

"In all matters of complaint by Indians they acted as mediators in the first instance, but where mediation was improper it was their duty to use every legal means on behalf of the complainant to procure for him adequate redress, if necessary bringing the facts of the case to the notice of the legal authorities of the Colony."

This statement is so guarded that it is difficult to infer from it any allegation as to a prevailing practice. No case is referred to by the text except the very case we have just cited, that of Billy William, which was not a case in point, as both the *locus* of the crime and the fact that the Indian was a resident of the colony brought the case within the criminal jurisdiction of the Colonial court. The question is not so much what the duty of the Protectors was "where mediation was improper" as what they did, and what the legal authorities of the colony did when the matter was brought to their attention. As to this, nothing whatever is said.

The British Case goes on to say that in cases of Indian murderers who had laid themselves open to the application of the Indian law of blood revenge, in some instances "the parties to the vendetta submitted their feud to the Protector's or Postholder's arbitration." This, again, is simply a voluntary submission of a dispute to the mediation of a third party, and indicates nothing whatever as to the existence and exercise of civil or criminal jurisdiction.

The case of Manoel has already been alluded to. Superintendent Crichton in 1839 was making a journey in the Barima, apparently with the object of receiving Indian complaints of oppression on the part of settlers who had employed them at

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Essequibo (B. C. VI, 65–75). On his way to Onoboe, an Indian settlement on the Barima, he was met by three Indians, who were in search of him to come and settle a dispute, which they were afraid would end in blood. This was the case of Manoel. The charge against Manoel was that he had forcibly dispossessed another Indian of his land, and Crichton gave an opinion that Manoel should give up the land to the owner. With this decision the accused seemed perfectly satisfied; in fact, as far as appears, Crichton was acting in the position of mediator, the attitude which De Groot had stated, only a few years before, that he habitually assumed in disputes between Indians. The Indians of the village, however, were dissatisfied that Manoel was not ordered to move out at once, and made an accusation against him of having killed his wife. It was upon this occasion that Crichton made the singular remark that "finding that this unfortunate transaction had taken place * * * on the left bank of the Barima River, where the Government has never claimed jurisdiction, I felt the difficulty of taking a decided step in the matter, and endeavored to restore peace among them by reason and persuasion first and then threats, and imagined that I had succeeded." Starting upon his return, however, he received word that Manoel had threatened to kill his accusers, and he accordingly took him away with him. Two months later he took Manoel back to Onoboe (B. C. VI, 78). No statement is made as to proceedings on the part of the Colonial authorities in this case, and it would appear that the Colonial Government decided that the case did not fall within their jurisdiction.

The cases of Pauli and Maul, upon which great stress appears to be laid in the British Case (pp. 102-3), are in no sense an evidence of control over the Indians. Both Pauli and Maul, against whom the proceedings were taken, were Essequibo colonists, and even if the proceedings had not been abortive, as they were, it would have been nothing more than an exercise of personal jurisdiction in a case of oppressive treatment of Indians by

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the colonists. All that the Superintendent of Rivers and Creeks did in the matter was to get together the evidence to support the prosecution, in which he does not seem to have been very successful. Both Pauli and Maul were arrested within the territories of Essequibo, one at Moruca and the other at Spring Garden, near Supenaam (B. C. VI, 99).

The trial would seem to have been somewhat of a farce, the Crown electing not to proceed on one indictment and the defendant being acquitted on the other, as the Indian witnesses were not allowed to testify, "on the ground of their possessing no religious belief" (B. C., p. 103).

A court which rejected the evidence of Indians against white men as incompetent could not be said to afford a very valuable remedy in cases of wrongs done to Indians by whites. Nor could it be said that a claim of political control was established by reason of the affording of such "protection" as this to to the Indians.

Even if Maul had not been acquitted, the case would have been inconclusive, as it is stated in the British Case (p. 103) that "no objection to the jurisdiction of the court was raised at any stage of the proceedings." The important question, therefore, as to whether or not the jurisdiction extended over a crime committed in Barima was never raised.

Superintendent King's report for the quarter ending December 31, 1840 (B. C. VI, 100-2) states that in November he was at the Pomeroon, and that "there were no Indians working for any of the inhabitants of the Pomeroon on account of the way Pauli and Maul had acted towards them, and they said they would not work until they saw how the case was settled."

If the Indians were waiting for a satisfactory termination of the trial before again beginning work in Pomeroon, they must have waited for a long time.

The case of Billy William is also without significance. Billy William was an Indian whose name would seem to imply that he

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lived at or near the British settlements. His case is stated at length in the evidence (B. C. VI, 40), from which it appears that the murder with which he was charged was committed on the Essequibo, and that William himself went to the Protector of Indians of the district in which he lived and gave himself up (B. C. VI, 44).

The case is evidently not one of jurisdiction over the territory in dispute. The most important point to be mentioned with reference to it is the testimony of Hilhouse, the Quartermaster-General of Indians (B. C. VI, 40), who made a remarkable statement which throws considerable light upon the extent to which the British criminal law was applied to the Indians in 1831. Speaking of the Indians, he said:

> "I am partially acquainted with their language, with their manners and customs perfectly. They have customs, but no code of laws, but have the *lex talionis* in all the tribes; on almost all occasions they exercise the *lex talionis* when a white mediation does not step in to buy off the murder by a pecuniary consideration. . . . There is scarcely a family of Indians in the Colony in which an instance of this retaliation has not occurred."

If this were true of Indians *in the colony*, what must have been the situation as to Indians outside of the colony, in the territory now in question?

Every case of the exercise of British criminal jurisdiction is cited, or may be presumed to have been cited, in the Appendix to the British Case. They do not number half a dozen, and in each one of them there is some specific fact as to the *locus* of the crime or residence of the offender, which makes the jurisdiction of no significance so far as the question of political control is concerned. If there had been others, they would have been cited. We may, therefore, assume that these were all. Nevertheless, Hilhouse, the the Quartermaster-General of the Indians, who probably knew more about it than any living person, who had been Quartermaster-General eight years before, speaking as late as 1831, at a time when the British had been in control of the colony for

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twenty-eight years, said that there was not an Indian family *in the colony* where there was not an instance of the application of the law of retaliation and blood revenge. Continuing his testimony in the Colonial Court room, he made this grim statement:

"If prisoner was acquitted I do not think the Indians would spare this man unless the Governor or some other person arranged compensation for the death of this woman; otherwise the avenger of her death is now in this room."

In view of the above, how idle it is to talk about criminal jurisdiction over wandering tribes of Indians, neither named or numbered, unidentified by the Colonial authorities, never coming in contact with the Colonial authorities, and inhabitating, when they inhabited any particular place, a territory stretching over a space of two hundred miles from the outside plantation of the colony, and to cite as proof of such jurisdiction a journey made by Mr. Crichton and another made by Mr. King, who were hunting up complaints against Essequibo employers of Indian labor, and in one or two trivial disputes acted as voluntary mediators between the parties. In this very colony, British criminal law was so little applied to Indians within the limits of the settlements themselves that Mr. Hilhouse could say that there was not an Indian family in the colony where a murder had not been committed and privately avenged, and in giving his testimony in court at the trial of an Indian for the murder of his wife, could make the horrible statement that if the prisoner were acquitted, "the avenger of her death is now in this room."

The last journey of the kind referred to was that taken by Superintendent McClintock, December 31, 1844, when he went to the Barama to act as arbitrator in a dispute which he heard had taken place between certain Indians. He travelled three hundred miles and was gone about two weeks, but took no action when he investigated the affair (B. C. VI, 134-6). He does not even tell us why no action was taken.

The case of Frederick, an Indian charged with murder, which

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was tried in the Colonial Court February 13, 1832, has no significance, as the Indian, Frederick, resided in Essequibo, and the crime was committed in Essequibo, as is shown by the evidence (B. C. VI, 47).

In reference to the so-called "Appointment of Indian Chiefs," to which extensive reference is made in the British Case, no practice seems to have prevailed as early as 1850 of making such appointments otherwise than as a mere recognition of a previous selection made by the Indians.

In 1823 Hilhouse writes to the Governor with reference to the appointment of chiefs (B. C. VI, 34):

"I have also to request, on the part of the Indians generally, that your Excellency will be pleased to prohibit all interference of the whites in the nomination of their Captains, as different individuals have in many instances taken upon themselves this right, which is purely elective on the part of the Indians themselves, and thereby given rise to great discontent and family animosities."

Timmerman, Protector of the Indians, states, in a letter to the Governor of Essequibo, January 26, 1833:

"The Indian Captains, which Mr. Hilhouse asserts to be appointed by the Postholders, are diametrically opposed to the fact, at all events in the Pomeroon district, where no deviation has been practiced contrary to the ancient established custom of leaving the choice of their Captains to the tribes themselves (whenever a vacancy occurs)" (B. C. VI, 49).

The practice of giving an appointment or commission as a Captain to chiefs of the Indians appears to have begun about 1834, in which year Captain Juan, who was already Chief of the Spanish Indians who had settled in Moruca, was appointed Captain (B. C. VI, 57).

It is difficult to see what significance this paper given to one who was already a chief could have.

Governor D'Urban, in a letter to the Colonial Secretary, Lord Goderich, November 26, 1831, fairly defines the relation of the Colony to the Indians (B. C. VI, 43):

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"Mr. Bagot has justly said that 'we have not dispossessed the Indians of their territory,' they occupy it as freely and uninterruptedly for every purpose which is essential or agreeable to them, as if we had never come hither (by the way we only succeeded to the place of the Dutch), but the tribes who live within reach of civilization, derive most solid and important benefits from our regular and constant assistance."

The facts stated in this chapter show that whatever interpretation may be put upon the treaty as to the significance of acts of Great Britain, either of settlement or of political control in the disputed territory since 1814, no extension was made before 1850 beyond the occupation of the Dutch at the date of the Treaty of London. The territory now in dispute was substantially in the same situation, both as to settlement and as to political control, as it had been in 1814. The evidence on this point is the evidence adduced by the British Case.

This evidence shows that there was neither settlement nor the exercise of political control by the British in the interior west of the Cuyuni falls, or in the coast territory west of Moruca.

The Agreement of 1850 that neither party would occupy or encroach upon the territory in dispute, has been discussed in the chapter on Diplomatic Correspondence. It is only necessary to say a word in reference to it here.

Assuming for the sake of the argument that the British contention is correct, that acts of occupation subsequent to 1814 are to be considered as establishing title in this arbitration, which Venezuela denies, no such effect can be given to any act of occupation after the adoption of the agreement and while it continues in force, nor can any existing occupation or political control ripen during the continuance of the agreement. The question of title to the disputed territory is, as it were, in suspense, and each State debars itself from the right to extend in any manner its occupation therein, or to take any benefit by the running of any prescriptive period. It constitutes an estoppel upon both parties as to such acts, and if either party performs such an act it is also estopped

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from deriving any benefit in law therefrom. All questions of occupancy or political control whether arising under Rule (*a*) of the Treaty or under any other branch of this investigation become inoperative, as far as their effect upon the creation or confirming of title is concerned, from the date of the signature of this agreement. No period can run after the adoption of this agreement. All operation of law as to the establishment of title is in suspense during this agreement. An absolute line of demarcation is established in the boundary controversy by the year 1850, after which and during the continuance of the agreement no act of either party has any legal effect whatever.

The Agreement of 1850 was appealed to by the British Government as late as 1887, and has never been abrogated. It is therefore still in force.

A word must be said here in reference to the case of Thomas Garrett (B. C. VI, 212). Garrett was a creole of Georgetown, who in September, 1874, committed a murder in Georgetown and escaped into the Barima territory. He was pursued there by British Guiana police and arrested "on the banks of the Amacura," brought to Georgetown, tried, convicted and sentenced.

According to Governor Longden in his letter to Mr. Middleton, January 30, 1875 (B. C. VI, 213):

"It is exceedingly difficult to reconcile the accounts which the constables give with the existing maps of the district, which maps are inconsistent with each other and probably equally incorrect. The country appears to be a wilderness, and the possession of it is claimed by Great Britain and by Venezuela alike. It is in fact a part of the disputed territory referred to by Colonel Wilson in his dispatch to Lord Palmerston of the 30th December, 1850, with regard to which he exchanged declarations with the Venezuelan Government that 'neither Government should occupy or encroach upon the territory in dispute.' As far as this Government is concerned, this declaration has been carefully observed, and *there are no resident British authorities within the district.* But I apprehend that in agreeing to this declaration Her Majesty's Government never surrendered or intended to surrender their claim to any part of the disputed territory,

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unless the boundaries of Venezuela and British Guiana should be finally adjusted, as proposed by Lord Aberdeen in 1844."

The statement on the part of the Governor that "there are no resident British authorities within the district" is a most significant statement, taken in connection with the previous statement that "this declaration has been carefully observed."

In Governor Longden's letter to the Earl of Carnarvon on this subject, dated February 22, 1875, he says (B. C. VI, 212):

"Garrett was arrested on the banks of the Amacura River, the river which was proposed by Sir Robert Schomburgk in 1841 as the boundary between Venezuela and British Guiana, but which boundary was not accepted by the Venezuelan Government, and *is not acknowledged by either Government.*

The position taken by the Foreign Office, in its instruction to Mr. Middleton, was that, as far as the Agreement of 1850 was concerned (B. C. VI, 215-6):

"It could not have been intended that this agreement should preclude either Government from arresting criminals in the disputed territory, and that it would be most undesirable that it should have that effect.

"I have also expressed to his Lordship my opinion that for the above reasons—assuming Governor Longden to be right in stating that Garrett was arrested in the disputed territory, and not within Venezuelan jurisdiction—the trial should be at once proceeded with.

"Lord Carnarvon has concurred in this view, and instructions in accordance therewith have been sent to the Governor of British Guiana.

"I have to instruct you to inform the Venezuelan Government of the decision of Her Majesty's Government in this matter.

"In doing so you will be careful to assure the Venezuelan Government that nothing could be further from the intention of her Majesty's Government than to sanction any infringement of the territorial rights of Venezuela. You will point out the very grave misfortune that it would be to Venezuela, as well as to the Colony of British Guiana, if the disputed territory lying between them were allowed to become a sanctuary in which criminals from both countries might take refuge, and so escape the punishment due to their crimes; and you will state that Her Majesty's Government feel confident that, on full consideration of the matter, the Vene-

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zuelan Government will recognize the justice and expediency of the decision which you are instructed to communicate to them."

The declaration of the British Government is most important as an admission that all but special and necessary jurisdiction is prohibited by the Agreement of 1850 in the disputed territory.

It is an admission that the exercise of such special jurisdiction, arising from the necessities of the situation, and to prevent the country from being an asylum for criminals, should not have any effect in establishing control, whichever party happened to exercise it.

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CHAPTER XVIII.

NATIONAL SECURITY.

We summarize here the conclusions which we have thus far reached.

1. That Spain discovered Guiana and, by a first and timely settlement of a part for the whole, perfected her title to the whole of the geographical unit known as Guiana.

2. That, if Spain's discoveries, settlements and armed expeditions are held to be inadequate to complete her title to the whole of Guiana, they are certainly effective as to all of the disputed territory.

3. That even if Spain's inchoate title had not been perfected when the Dutch occupied the mouth of the Essequibo, she had not abandoned that region in fact, and no presumption of an abandonment had then arisen; and the Dutch entry—even if a peaceful one—was premature and wrongful.

4. That, in fact, the Dutch entry at Essequibo was not an attempt to appropriate lands believed to be open to peaceful settlement, but was an act of war—the forcible appropriation, in war, of territory known to be claimed by Spain, and as to which Spain's purpose to hold and to settle was well known.

5. That, by the Treaty of Munster, the Dutch title by conquest to the places then actually possessed by them in Guiana, was confirmed by cession from Spain.

6. That the treaty involved the concession that what was not given to the Dutch was retained by Spain, and that, when the limits of the Dutch possessions were marked, the territory beyond —to the north and west—was Spain's territory.

7. That, at the date of the Treaty of Munster, the Dutch were not in the possession of any part of the disputed territory.

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8. That the Dutch could not thereafter acquire title to any part of the disputed territory save by prescription, and that a public, continuous, adverse, undisputed, actual and firm occupation, under a claim of right, for fifty years was necessary to perfect a title by prescription.

9. That there was never any such occupation by the Dutch of any part of the disputed territory; every attempt at occupation being protested and resisted by Spain; and every such attempt having utterly failed, except the settlement in the Pomeroon-Moruca region.

10. That the exclusive political control which the Tribunal is given an option to consider as the equivalent of adverse holding, must have the characteristics of an adverse holding which we have enumerated, and that no exclusive political control was ever exercised by the Dutch over any part of the disputed territory unless perhaps it be on the Pomeroon. In the close neighborhood of the Moruca post such a control was exercised, but it was protested and resisted by Spain in every way that was open to her—as has been every attempt to make settlements or to assume control of the disputed territory.

11. That the Agreement of 1850 cut off all titles by prescription or political control, and established a neutral status in the disputed territory; that all acts of Great Britain since are wholly ineffectual to extend her territory or to confirm her title.

12. That, whether the Dutch title is rested upon conquest, cession or prescription, it is a strict and limited title, in behalf of which the rules as to constructive occupation cannot be invoked. The conqueror gets only so much as he firmly holds; the grantee only what is granted; one who prescribes, only what he has actually appropriated. None of these can invoke against the party from whom the title is wrested any rule of constructive occupation, such as the rule of natural boundaries, of water shed, of middle distance, or any other rule that is rested upon such considerations as safety or convenience, or geographical unity and

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the like. These rules rest upon the theory that the contending nations have equally meritorious and original titles, and cannot be used to extend a grant, or to aid a disseizor.

But Great Britain denies that the Dutch territories in Guiana were in any way derived from Spain. She expressly disclaims any title by conquest, or by cession, from Spain. A title by prescription is tentatively put forward, but the territory to which it is applied is left undefined, and it seems to be denied that this prescription is used to cut off a prior Spanish title. It is rather prescription in the sense of *occupatio*. For the British contention is that Spain had no title whatever, either to the lands in Guiana originally occupied by the Dutch, or to those "great extensions" afterwards made by them; that all of these lands were *terra nullius*, subject to be freely appropriated by any nation; that, therefore, the Dutch may claim for their settlements the same broad effects—as to their constructive limits—that can be claimed for those of Spain, the discoverer and first settler. If the prescription set up is used to cut off a prior Spanish title, this would hardly be claimed. The convenience and security of a disseizor is not taken account of. Now, while this contention of Great Britain is utterly unsupported by the facts, and directly contradicted by the official declarations of her grantor, made before the grant, and directly to her, we ought, perhaps, to discuss briefly the boundary question upon the basis of this contention.

Upon the theory of the British Case that the actual settlements of Spain in Guiana did not have relation to the whole of that province, or to the whole of the disputed territory, but only confirmed her title as a discoverer to such parts of it as were actually occupied by her—leaving all other parts open to the occupation of the Dutch—and that there was an implied abandonment by Spain which must prevail even against her expressed intent to occupy the whole, what are the rules of law as to the limits that will be allowed to the Dutch settlements? Are they to be fixed upon a basis that admits a constructive possession of vast unoccupied

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areas, upon a basis that allows to the Dutch all of the equitable extensions that may be claimed for the settlements of the discoverer?

May the second comer, for instance, claim one-half, or even more if a natural boundary suggests it, of the territory that intervenes between his settlements and those of the discoverer? If in this unoccupied, intermediate space, there is a region that is equally necessary to the safety of each settlement, has the discoverer and first comer no preferential right? Are the intendments of law, as to the extent of an occupancy, to be given their full scope in behalf of the first comer and exhausted before the rights of the second comer can be considered, or do they enter in parity of right? Or is it true—as seems to be claimed by the British Case—that all of the equitable intendments and constructive extensions are to be allowed to the second comer? May he extend his limits so as to close the access to the discoverer's settlements and to command the entire interior possessions of the discoverer and reach to the very heart of his settlements?

May the second comer not only claim a middle line, but extend himself, by construction, to the fenced possessions of the discoverer and first settler?

Given, settlements by the discoverer on the Orinoco, and by the second comer on the Essequibo, may the second comer make the Orinoco the line of division? Is the discoverer to be treated with severity, and the one who followed in the road he had opened, with liberality? The rules suggested by the British Case seem to imply all this.

In the British Counter-Case (par. 9, p. 136) we have the statement:

"There is no distinction between the first and second comer beyond this that, as already stated, the first comer has a right within a reasonable time to take possession of his discovery; otherwise the same rules apply to the original possessor as to the person taking subsequent possession."

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In subdivision 4 of the Principles of Law given in the British Case (p. 149) it is said:

"As between two or more neighbouring and rival settlements, the line of division cannot be ascertained by any hard and fast rule applicable to all cases. A line must be looked for which shall divide the country in accordance with the principles which, upon a consideration of all the local circumstances, seem those of natural division. But great weight must also be given to the relative importance and presumable power of expansion in the direction of the vacant territory of the settlements, between which it is to be divided."

The rule here stated is that, if the second comer is more wealthy, populous and powerful than the discoverer, the territorial division is to be upon the lines of the relative importance and power of the discoverer and the intruder.

In the dispute between Great Britain and the United States as to the Oregon boundary, Great Britain was at the other end of the argument. Mr. Twiss (Oregon Case, p. 312) represents Mr. Gallatin, on behalf of the United States, as putting forward, as a consideration affecting title by contiguity, the superior ability of the United States to settle the territory. This theory was utterly rejected by Great Britain, and Mr. Twiss thus disposes of it:

"The reason which Mr. Gallatin alleged in support of the title by contiguity, namely, the facility with which the vacant territory would be occupied by the teeming population of the United States, is but the disguised appeal to the principle of the *vis major*, and strikes at the root of the fundamental axiom of international law, that all nations are upon a footing of perfect equality as to their obligations and rights."

The law writers do not allow a parity of right to the second comer. Twiss (Law of Nations, Sec. 128) says:

"When title by settlement is superadded to title by discovery the law of nations will acknowledge the settlers to have a perfect title; but when title by settlement is opposed to title by discovery, although no convention can be appealed to in proof of the discovery having been waived, still a tacit acquiescence on the part of the nation that asserts the discovery, during a reasonable lapse of time since the settlement has taken place, will bar the claim to disturb the settlement."

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He then quotes Wheaton as basing a title by settlement on an implied intention of the discoverer to abandon the territory and a prescription by the settlers.

And in the next section he says:

"Title by settlement then, as distinguished from title by discovery, when set up as a perfect title, resolves itself into title by usucaption or prescription."

He then proceeds to show that the title rests upon the implied acquiescence of the discoverer, his silence after knowledge of long uninterrupted possession. He says the law of nations has not defined the length of time that will constitute a title by prescription and refers to the Hudson Bay dispute between France and England, where England claimed title by discovery, but also alleged against the French claim of discovery, an acquiescence in British settlement.

This author then distinctly discriminates between the settlements by a discoverer and settlements by a second comer. The latter he rests upon prescription, matured by the acquiescence of the discoverer. He cannot, however, be taken to acquiesce unless there has been an actual possession, and only so far as that has extended.

Fiore (Paris edition, 1885, Sec. 850), well points out that non-user is not abandonment unless there be a clear intent to renounce title. But if one state cease to physically occupy or use a tract, and a second state, though without any right of possession, does actually take physical possession, and holds it with manifestations that are obvious, open and unequivocal (*signi esteriori non equivoci*), and this condition of things is known to the state which formerly had possession, and is tolerated by it; this, if continued long enough, proves an abandonment, and, as a legal consequence, legitimatizes the possession. This, Fiore thinks, is the true origin of international prescription.

We will try, then, to point out how far the British claims exceed her rights, even upon the theory that Spain had no other ad-

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vantage than such as belongs to the first comer; that each was entitled to hold only the lands it occupied and such further bounds as are, for one reason or another, allowed by the rules of international law to be attendant upon or appurtenant to the lands occupied.

In the very nature of things the first comer has this advantage. His constructive limits are not curtailed by those of any rival claimant. He is entitled, from the date of his settlement, to the widest constructive limits allowed by law.

The second comer can take only what is left; and none of the rules of constructive possession can be used by him to curtail the constructive occupation of the first comer.

Before any Dutch occupation in Guiana, Spain had settlements at Trinidad, Santo Thome and Essequibo. The first two of these were, when the Dutch came to Essequibo, peopled by Spaniards and held by Spanish officers and garrisons. Essequibo was not at the time actually occupied, but had not been abandoned.

From the time when the Spaniards first settled in Trinidad and in the Orinoco, the Essequibo was constantly visited by them; and a Spanish colony was actually established in that territory. Fortifications were erected, and the land was placed under cultivation for the purpose of producing bread for the Governor at Trinidad.

But, waiving at this point the consideration of the Spanish settlement in Essequibo, let us see what constructive limits the law assigned to the Spanish occupation of the Orinoco.

The first rule of law to which we call attention is thus stated by Hall (Int. Law, 4 ed., 110):

> "A settlement is entitled not only to the lands actually inhabited or brought under its immediate control, but to all those which may be needed for its security."

This extract is quoted in the British Case, without dissent, and may, therefore, be taken as accepted:

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Phillimore (Int. Law, 3d ed., i, pp. 337-338) says:

"They (the law writers) all agree that the Right of Occupation incident to a settlement, such as has been described, extends over all territory actually and *bona fide* occupied, over all that is essential to the real use of the settlers, although the use be only inchoate, and not fully developed; over all, in fact, that is necessary for the integrity and security of the possession, such necessity being measured by the principle already applied to the parts of the sea adjacent to the coasts, namely, *ibi finitur imperium ubi finitur armorum vis*. The application of the principle to a territorial boundary is, of course, dependent in each case upon details of the particular topography."

And Twiss (Law of Nations, Sec. 133), speaking of the rule of a mid-channel boundary, says:

"Circumstances however may create exceptions, as for instance when the control of a district *not actually reduced into the possession of a nation* is necessary for its security, and is not essential to the security of the coterminous state."

Spain, from the moment Trinidad and Santo Thome were settled, was entitled to the full application of this rule in her behalf. No settlement made thereafter by the Dutch could, by any constructive effect, in the slightest degree invade the limits given by the rule to Spain. That these limits leave the Dutch insecure, gives them no right to demand a new line. They might as well claim the right to push back the discoverer's line of actual occupation.

Let us now apply this rule to the case in hand. It gave to Spain as appurtenant to her settlements all territory and places that might reasonably be needed for their security and integrity. Surely we do not need to make an argument to prove that the occupancy of the mouth of the Orinoco by any other power was absolutely incompatible with the security, not only of Santo Thome, but of the Spanish settlements to the south of that river. It is wholly unworthy of discussion whether such an occupancy would have been a complete barrier to Spanish access from the sea to the Orinoco; or would only have made such access difficult and perilous. It is to us matter of great surprise that, admitting the rule we are discussing, Great Britain should put forward a claim

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to Barima Point. Of the military and commercial results of the occupancy of Barima Point she was early advised. Indeed it is plain from Schomburgk's report that the unfair advantages to result therefrom had much to do with the line he proposed. He says (June 22, 1841):

"The peculiar configuration of the only channel (Boca de Navios), which admits vessels of some draught to the Orinoco, passes near Point Barima, so that if hereafter it became of advantage to command the entrance to the Orinoco, this might be easily effected from that point. This assertion is supported by Colonel Moody's evidence, who visited this spot in his military capacity in the commencement of this century." (B. C., VII, p. 13.)

He adds that to place some person of authority at this point would "command from the neighbouring States that respect to which a British colony like Guiana has full right."

The word "respect" seems here to be used in the sense of *submission*. It is the "respect" that a prisoner pays to his jailer.

In a confidential letter to Governor Light, written October 23, 1841, Schomburgk more fully explains the importance which attaches to Barima Point, and here discloses a stronger and doubtless the true reason for his attempt to fix the boundary at the Amacura. He shows that the Orinoco offers water transportation for from 400 to 500 leagues; that there are nearly 300 tributary streams of more or less importance which also serve as canals and facilitate commerce; that Santa Fé de Bogota may be reached within a distance of eight miles by one of these tributaries, and (to quote) that "operations of commerce or war, combined with others from the Pacific, could be carried on by means of the vast plains or llanos. A small fleet may go up the Orinoco and the Meta within 15 or 20 leagues of Santa Fé, and the flour of New Granada may be conveyed down the same way.

And the only access to this vast inland communication for sailing vessels of more than 10 feet draft of water is by means of the Boca de Navios, which is *commanded from Point Barima.*" (B. C. VII, p. 33.)

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He proceeds to say that Venezuela "would be an insignificant enemy," but points out that some maritime power of Europe might get Barima. It is not an altogether unfamiliar policy this —to seize a military or commercial strategic point from a weak power, out of the assumed fear that some other strong power might get it, or to equalize the seizure of some other strategic point by another nation. France, he says, has attempted to extend the bounds of Cayenne to the Amazon, and her success will give her the control of the great commerce of that river. She might also seize Barima, and, therefore, Great Britain must seize it. We quote further:

"France has attempted to establish a fortified position at the mouth of the Amazon near Macapa, which she claims as the eastern boundary of Cayenne. A settlement at this spot commands the commerce of the Amazon, and this no doubt, is the reason why this Power puts such importance upon its possession. Supposing that unforeseen circumstances should put France in occupation of Point Barima at the Orinoco, and that Macapa at the Amazon is ceded to her, she will then command the commerce of the two first rivers of South America, and hold the military keys of the northern provinces of Brazil and of the former Spanish provinces of South America, north of the equator, which territories will be always at the mercy of that power which commands the channels to their commerce." (B. C., VII, pp. 33–34.)

Yes; Barima Point commands the whole drainage basin of the Orinoco, and these vast territories "will be always at the mercy of that power which commands the channels of their commerce."

The author of these suggestions very suitably marked them "confidential." They do not bear the light well.

In this confidential letter of October 23, 1841, Schomburgk quotes Colonel Moody, who, as he says in his letter of June 22, "was sent in the earlier part of this century to report on the military situation of the Orinoco," as saying that Point Barima was "susceptable (*sic*) of being fortified so as to resist almost any attack on the sea-side—the small depth of water, the nature of the tides, and its muddy shores, defend it. The Barima, and the un-

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cultivated forests on marshy ground, present an impenetrable barrier against the interior, and debarkation from the Orinoco might be put under the fire of any number of guns—and the land reproaches (*sic*) on that soil could be easily rendered inaccessible to an invading force."

Mr. Schomburgk adds that this statement is "fully born out by personal inspection during my late survey of the entrance to the Barima." (B. C., VII, p. 33.)

It would seem, from Colonel Moody's mission, that the English interest in Barima Point antedated Schomburgk's alleged discovery of traces of Dutch occupation there.

Great Britain cannot, in view of these reports from her civil and military representatives in Guiana, deny that the control of Barima Point was essential to the military and commercial security, not of Santo Thome alone, but of the Spanish settlements to the south of the Orinoco, which must use that river as an outlet. It seems, indeed, that the product of the mines of Peru were sent, in a good measure, by the Orinoco to Spain. This fact and the rule of law, as stated by Hall, being admitted, the Barima region was as definitely and absolutely Spanish territory when the Dutch entered the Essequibo as were the fields and gardens about Santo Thome.

The control of the Orinoco is to Venezuela a matter affecting the control of her commerce and her national security. To Great Britain it involves nothing as to her own commerce or security, but only the right to subordinate the commerce and the liberties of a sister nation.

But the possession of Barima Point does not satisfy the reasonable demand for security of the Spanish settlements on the Orinoco. The Point is of little value if it may be easily flanked by a water route. The possession of all affluents of the Orinoco, entering above the Point, is essential. The evidence shows that the route of commerce from Essequibo to the Orinoco was by the

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Waini and the Barima, those internal water passages. The control of the trade of the Orinoco involved the control of the Waini, Barima and the Amacura. The control of the mouths of these would not be efficient—if hostile expeditions and contraband traders might use the streams to points near the Orinoco. These rivers and the Mora passage were the side doors of the Orinoco, and if they were open, the bolting of the front door was of no avail. The British Counter-Case (p. 28) expressly admits that "*The Spaniards entered, explored, settled, and effectively defended the Orinoco.*"

If the Orinoco was Spain's and she was entitled to control its mouth for her security, then she must, for the same reason, also control all affluents entering that river above the extreme projecting points of its shores. This would carry the Spanish limits to the headwaters of all rivers through which a water access might be had to the Orinoco.

We shall a little later discuss the water shed theory put forward by Great Britain, in its application to the Orinoco, but for the present we confine ourselves to the discussion of the rule of security and integrity.

This rule has a further application. The ownership of the Orinoco, and the settlement at Santo Thome, are not secure, even if the mouth and all the affluents of that river be given to Spain, if there is not also allowed, as attendant upon that ownership and the settlements on the Orinoco, such a breadth of land on the south bank as to keep an enemy from a quick and easy access to the river. The second comer may not, by a mere constructive occupation, extend his bounds threateningly near to the "very heart" of Spain's actual occupation.

The British Case puts forward a claim to the whole water shed of the Essequibo and its tributaries; but this is based upon a Dutch occupation that did not exist when the limits of Spain's earlier settlements were assigned.

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The effect of allowing this claim, Schomburgk thus describes (V. C. vol. iii, p. 137):

"I consider that Her Majesty has undoubted right to any territory through which flow rivers that fall directly, or through others, into the River Essequibo. Your Excellency is well aware that the Cuyuni falls a few miles above the penal settlement into the Mazaruni, and both river. after their junction empty themselves at Bartika Point into the Essequibos Upon this principle the boundary line would run from the sources of the Carimani towards the sources of the Cuyuni proper, and from thence towards its far more northern tributaries, the Rivers Iruari and Iruang, and thus approach *the very heart of Venezuelan Guiana.*"

He then proceeds to point out that these inland regions are of less importance to Great Britain than Point Barima, called by the Venezuelans "the Dardanelles of the Orinoco"; but that, by putting forward the water shed claim, Great Britain would acquire "additional grounds to impress the claim of Point Barima." And indeed the fading Indian traditions and the faint evidences that some one, assumed to be a Dutchman, had lived at Barima, sadly needed the aid which this suggested barter would give.

The grim truth of Schomburgk's statements as to the scope of the watershed claim will appear when we examine a table of distances. This watershed line is distant from the south bank of the Orinoco, at the mouth of the Aguirre, 40 miles; at the mouth of the Imataca, 53 miles; at the mouth of the Piacoa, 23 miles; at the first site of Santo Thome, 29 miles; at the second site of Santo Thome, 21 miles, and at the mouth of the Caroni, 35 miles. The line is nowhere more than 64 miles from the lower Orinoco. Along the line of the Caroni it runs, at the mouth of the Usupano, within 10 miles of the Caroni, and at other points is 19, 20 and 25 miles distant.

The line, at the point where it comes within 21 miles of Santo Thome, is distant 288 miles from Fort Kykoveral.

Here, then, we have a second comer claiming a constructive extension of the limits of a single small settlement that would carry his line, at its most distant point, 300 miles from that settle-

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ment and to within 21 miles of the principal settlement of the discoverer and first settler of the country.

Phillimore says of "natural boundaries":

"We know indeed, alas! by recent experience, that the phrases 'natural boundaries'; and 'rectification of frontiers' have been used by powerful military States to cover unjust spoliation of the property of their weaker neighbour." (Int. Law, 3d ed. i, 345.)

The reasonable security of the Spanish settlements is flagrantly denied, if the second comer may, by invoking another rule of constructive occupation, limit the Spanish territory to a narrow strip along a great river, both banks of which Spain had first occupied, and bring a hostile power within twenty-one miles of Spain's principal settlement. The rule of security is the rule that first comes into operation and dominates every other. If, therefore, the rule as to the water shed were, as Great Britain now states it, rather than as she stated it in the Oregon controversy, it must give way to Spain's prior right to be secure in her ownership of the Orinoco and its tributaries. The water shed theory is not left to have a partial application, but is wholly put out of use by the Dutch, for the reason that before the Dutch entered the Essequibo the upper water shed had been occupied by Spain—under the rule we are considering.

We conclude, therefore, that if Spain had no other advantage than that of the first comer, the rule of reasonable security gave to her, as appended to her Orinoco settlements, both banks of the Orinico, and of all affluents of that river entering above Barima Point, and, at the least, such a width of territory to the east of the Orinoco as would reasonably protect its eastern or southern bank and the settlements thereon from quick and easy attack.

Cape Nassau would be the nearest eastern point on the coast that could possibly be suggested as the line of security. If it be said that such a line would open a back door to Essequibo, the answer is obvious: The line was drawn and this territory was Spain's before the Dutch came.

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As to the interior, it is not so easy to locate the exact line of security as related to the Orinoco settlements alone. But when we take into account the fact that Santo Thome was a gateway to El Dorado, and that this interior was, in the language of Phillimore, "essential to the real use of the settlers," without which there would be no reason for maintaining Santo Thome, we are enabled to say that the region attendant upon the Spanish occupation of the Orinoco certainly embraced a large part of the territory now claimed by Great Britain in the interior. Santo Thome was the military and commercial base for the great interior. It was established and defended as a gateway, and to isolate it is to destroy the only reason for its existence.

We have not coupled the Spanish occupation of the Essequibo with their settlements on the Orinoco in this discussion. Elsewhere we have clearly shown, we think, that Spain occupied the Essequibo before the Dutch came, and that her absence at the time did not work an abandonment. If that be so, then any constructive extension of the limits of a settlement at the mouth of the Essequibo, which the law allows, would belong to Spain. If the occupation of the mouth of the river had the effect claimed for it by Great Britain, the basin had been appropriated by Spain before the Dutch came; and that appropriation could not be affected by the wrongful entry of the Dutch beyond the line of their actual occupation.

There is another rule of law closely related to the rule we have been discussing. It is the rule that gives to the nation owning the banks of a stream, and as appurtenant to that ownership, the delta region found at its mouth. This rule is not at all based on the idea that the soil of these delta formations has been carried from the banks of the river itself, or from other lands owned by the nation claiming the delta region. Indeed, when it can be positively shown that the alluvion has been torn from one bank and deposited upon the other, the rule is still applied. Between indi-

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vidual owners the rule is based upon considerations relating to land boundaries; but, as applied to a nation, it is rather a specific application of the rule of security. It is the relation of these delta regions to the control of the mouth of the river, and to the security of the settlements on the river, that fixes their status.

It is wholly immaterial where the detritus came from—whether down the Orinoco, or down the Essequibo and by the ocean currents to the mouth of the former river. These deposits are caused by a loss of velocity in the current carrying the silt. The Orinoco loses its flow in the sea and drops its silt. It also checks and deflects the flow of the ocean currents across its mouth towards the west, and causes that current to drop some of its silt at points to the eastward of the main channel of the Orinoco. As the delta formation grew, this effect would be increased. The coast region to the east of the Boca de Navios, as far as Cape Nassau, is undeniably alluvion; and if, by the deposit of silt coming from the east—whether influenced by the Orinoco or not—the Barima and the Waini now communicate with the Orinoco, while maintaining, through the Mora passage, another entrance to the sea, the delta region has become one.

Boats may pass from the Orinoco through the Barima and the Waini to the sea by natural channels. The tide flows in and out of the Barima, at the Orinoco and at the Mora passage. At the time of the discovery of Guiana, this inland water way from the Moruca was the safest and quickest route for boats between the Essequibo and the Orinoco. Other mouths of the Orinoco flowing through the delta towards the Gulf of Paria, or towards Trinidad, bore independent names, just as these do, and were similarly used as outlets to the west. In whatever manner, then, as a scientific problem, it came about, we find the Waini and the Barima to be parts of the delta water system of the Orinoco. The mouth of a stream is "where the points of the coast project no further."

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Lord Stowell, in Twee Gebroeden (3 Rob., 34), says:

"The embouchure or mouth of a river is that spot where the river enters the open space to which the sea flows, and where the points of the coast project no further."

The rule of law applicable to delta regions is thus stated by Twiss (Law of Nations, Sec. 131):

"Upon like considerations of security, islands which have been formed by the accumulation of mud at the mouth of a river, and which keep sentinel as it were over the approaches to the mainland, are regarded as necessary appendages of the coast on which they border and from which they are formed."

The rule is rested by this author upon considerations of security. The relations of these islands to the river mouth, as we find them, is the determining thing. How they came there is wholly unimportant to the jurist. Lord Stowell's opinion in The Anna (3 Ch. Robinson, 395) makes this clear.

"Consider," he says, in the case of certain islands at the entrance of the river Mississippi, "what the consequences would be, if lands of this description were not considered as appendant to the mainland and as comprised within the bounds of territory. If they do not belong to the United States of America, any other Power may occupy them; they might be embanked and fortified. What a thorn would this be in the side of America! It is physically possible at least that they might be so occupied by European nations and then the command of the river would be no longer in America, but in such settlements. The possibility of such a consequence is enough to expose the fallacy of any arguments that are addressed to show that these islands are not to be considered as part of the territory of America."

The delta regions on the east of Boca de Navios, in the control of another nation, would be a thorn in the side of the nation owning the Orinoco river; would give a sentry post to an enemy quite as much as those on the west. There is no part of the entire delta region of the Orinoco to which the reasoning applies more strongly

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than to the Waini-Barima region. Indeed, if we give to Great Britain this region, the guards of the Orinoco mouth might almost as well be withdrawn; for she will have secured a water inlet that isolates them. The reason of this rule certainly includes as delta islands all of the lands on the ocean side of any waterway flowing through the alluvion, that may be entered from the main river and followed to the sea.

The British interest in this territory is not its value for settlement, or as necessary to the defense of their settlements, but as giving them control of the mouth of the Orinoco, the basin of which is, and always has been, Spanish.

Schomburgk has this to say of this region (B. C., VII, p. 34):

"The peculiar formation of the fluvial system of the coastland between the Barima and the Essequibo admits an inland navigation, in punts and barges, to Richmond Estate, on the Arabisi Coast of the Essequibo, which with a few improvements might vie with any of the interior canals of England."

That is to say, the possession of this "fluvial system" would establish at least a joint use and control of the Orinoco, and with Barima Point would dominate that river. This brings the river fully within the reasoning of Twiss and of Lord Stowell.

These rules based upon the right of the first settler to be secure in his possessions are controlling. All other rules, based upon convenience and kindred considerations, are in abeyance until there has been set apart to the first comer all places that may be reasonably necessary to his present and prospective security. We cannot for a moment doubt that a stretch of country to the east of the Orinoco, extending on the coast to a point that will include the water sheds of all streams entering the Orinoco, was reasonably necessary to the security of the Spanish settlements on the Orinoco. The question of the line of safety, in the interior, involves a consideration of the Spanish interior settlements, which we do not enter upon here.

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CHAPTER XIX.

WATERSHED.

Great Britain puts forward a claim to the constructive possession of the whole watershed of the Essequibo, including its great tributaries, the Mazaruni and the Cuyuni. The area of this basin, treating it as one, is about 67,000 square miles. We are not definitely informed as to when it is claimed this title attached, though that date is a very important factor in determining whether it ever attached. These extracts from the British Case (p. 161) perhaps give us the scope of the British contention, as first propounded:

"It is not disputed that the Dutch and the British have for centuries been in full possession of a very considerable territory on both sides of the Essequibo below the point where it is joined by the Massaruni. It is submitted that, according to every principle of international law, this carries with it the right to the whole basin of the Essequibo and its tributaries, except in so far as any portion of that basin may have been occupied by another Power.

"The Power in control of so large an extent of territory round the lower course of a river such as the Essequibo, to which no other Power has ever had any access, and where no dominion other than that exercised by the Dutch and the British has ever existed, has a *primâ facie* right to the whole of the river basin. Such right can only be rebutted by proof of actual occupation by another Power."

And again:

"The title of the British to the basin of the Essequibo and its tributaries is greatly strengthened by the fact that the only permanent means of access to by far the greater part of the upper portion of this basin is by these streams themselves. The Power in control of the lower portion of the Essequibo therefore commands the whole of the basin of that river and its tributaries."

The first of these paragraphs seems to make the river basin attendant upon settlements on the lower tide water banks of the Essequibo, without any further occupation of the coast—

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provided "considerable territory on both sides" of the river is occupied. This constructive extension of the limits of the river mouth settlements is not put upon the fact that the river is the means of access to the interior region, but is, we are told, "strengthened" by that fact. And finally this watershed rule, it is said, can only be stayed in its operation by a prior "actual occupation by another Power." We answer: There is no principle of international law that gives to such a tidewater, river-mouth settlement, as the Dutch had at Essequibo, the wide constructive effect here claimed; and, if there were, a good prior constructive occupation by another nation would prevent its operation just as effectually as a prior actual occupation.

The rules of constructive occupation must take effect in their order, and if by any other such rule of law the river basin, or any part of it, had been assigned to Spain before the Dutch came to Essequibo, she could not be deprived of it by any mere constructive effect given to the Dutch settlement.

The watershed or coast settlement theory is not capable of a partial application. It is put upon the theory that the river is the channel of communication with these interior lands—and that this fact creates a natural geographical unit that is to be preserved. But if the upper stretches of the river are first occupied, whether actually or constructively, the unity of the tract, and the reason of the alleged rule, can only be preserved by giving the *mouth* to the first appropriator of any part of the basin. And, as this rule can give only a constructive occupation, if any other rule—such as the rule of discovery, or of the security and integrity of a settlement—has already taken effect in the basin, the first cannot be used at all.

And further the British Case impliedly admits that the watershed rule here put forward did not operate until "a very considerable territory on both sides of the Essequibo below the point where it is joined by the Massaruni" had been occupied by the Dutch.

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When did the Dutch settlement on the Essequibo acquire the extent necessary, according to the British contention, to bring into operation this watershed theory? Great Britain should have assigned a date, or at least an approximate one. Of the occupation of the Dutch on the Essequibo in 1648, Professor Burr says:

"Such are our scanty materials for a notion of the character and limits of the Dutch colony on the Essequibo at the close of the long war with Spain. So far as they enable us to infer, it was a body of two or three dozen unmarried employés of the West India Company, housed in a fort at the confluence of the Cuyuni and Mazaruni with the Essequibo, and engaged in traffic with the Indians for the dyes of the forest. Agriculture, save for the food supply of this garrison, there is little reason for supposing. Of tobacco or of sugar one hears nothing after the mention of the specimens received in the time of Jan van der Goes. The first sugar mill on the river seems to have been established in 1664; and at that date there was as yet no provision for the registry of lands in Essequibo. This purely commercial character of the Essequibo establishment is the more striking because the other Dutch colonies on the coast, both those of the patroons and those planted directly by the Company, had all been of settlers. . . . Of outposts there is thus far no mention.

"Such as it was, the post on the Essequibo remained in 1648, as it had always been, the westernmost establishment of the Dutch on this coast, and was now, with the exception of Berbice, their only Guiana colony." (V. C.-C., vol. ii, pp. 74–75.)

Surely this was not the occupation of "a very considerable territory on both sides of the Essequibo."

In the British Counter-Case (p. 136, par. 10) we have what seems to be a greatly modified statement of the watershed rule. To the proposition of the Venezuelan case that, "Ownership of the mouth of a river does not, of itself, give title to the watershed," Great Britain answers: "This proposition is too narrowly stated. Ownership and control of the course of navigation of a river may in some instances give title to the watershed." This statement of the rule would deny to the Dutch and to the British the Cuyuni basin, for two reasons, first because the Essequibo and the Cuyuni

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were not ways of commerce, and, second, if they were, neither the Dutch nor English ever controlled the course of navigation. On the other hand, the rule as stated would give to Venezuela the watershed of the Orinoco; for Spain first, and Venezuela after her, did own and control the course of navigation of that river from the date of its discovery. The appeal of Great Britain's representative in 1836 to Venezuela for the erection of a light-house at Barima, indubitably proves that this ancient control was maintained and acknowledged. Unless it can be shown that the Amacura and the Barima are parts of another watershed, the rule as stated by Great Britain would assign those rivers to Venezuela.

We will now consider briefly the law applicable to river-mouth settlements. It has happened that Great Britain, in her boundary contentions, has several times faced the question we are now considering, and in every case in America, so far as we now recall, she has defended and secured territorial limits that were utterly antagonistic to the rule she now puts forward. In the cases of the St. Lawrence, the Mississippi and the Columbia Rivers in North America, Great Britain did not hold the mouths of those streams, and so did not concede to the river-mouth settlements the constructive limits she now claims for Essequibo; notwithstanding that, in the cases of the St. Lawrence and of the Mississippi, France was the discoverer of those rivers, had fully explored them, had occupied the coast near their mouths, and had planted posts in the interior.

In the case of the Columbia, the river had been discovered by an American, entered from the sea, and a settlement made at the mouth. In all of these cases Great Britain claimed and appropriated a large share of the drainage basins of these rivers. In the case of the Mississippi Valley, to do this she passed beyond the head waters of the Atlantic rivers, over a high and continuous mountain barrier, that separated the drainage basins, and claimed and secured that immense and fertile section of the Mississippi Valley lying east of that river. All of these rivers, especially the St.

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Lawrence and Mississippi, were great navigable waterways, affording, in that period, the only natural channels of commerce available to the interior. If there has been any case where Great Britain has, against her interests, allowed to any other power the rule she asserts here, we have not found it. We will not attempt to exhibit the details of the Oregon controversy, but will present from the English law writers enough to show the position taken by Great Britain.

Discussing the geographical extent of titles, and especially the doctrine of watershed, Westlake (Int. Law, p. 171), says:

"If that doctrine were adopted in its fullest extent it would lead to the conclusion that France, while she held Canada and Louisiana, was entitled to all the basins of the St. Lawrence and Mississippi, except such portions of the former as were comprised within the settled area of the English colonies, and such portions of the latter as were well understood to belong to Mexico. But during the negotiations with England in 1761 France repudiated any such claim, and proposed that the Indians 'between Canada and Louisiana, as also between Virginia and Louisiana, should be considered as neutral nations, independent of the sovereignty of the two crowns, and serve as a barrier between them' (Twiss, Oregon Question, p. 307)."

Twiss (Oregon Question, p. 245) states that the United States had before formulated this rule:

"That whenever any European nation takes possession of any extent of sea-coast, that possession is understood as extending into the interior country to the sources of the Rivers emptying within that coast, to all their branches and the country they cover, and to give it a right in exclusion of all other nations to the same."

He says the reason of the rule was thus stated by Pinckney and Monroe:

"Nature seems to have destined a range of territory so described for the same society, to have connected its several parts together by the ties of a common interest and to have detached them from others."

And again (p. 247):

"Because their settlements bar the approach to the interior country and other nations can have no right of way across the settlements of independent nations."

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Twiss (*ib.*, 148) quotes Mr. Rush as saying, in 1824:

"I asserted that a nation discovering a country, by entering the mouth of its principal river at the sea coast, must necessarily be allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river and its tributary streams."

To this, Twiss says, "Great Britain formally entered her dissent," "denying that such a principle or usage had ever been recognized amongst the nations of Europe, or that the expedition of Captain Gray, being one of a purely mercantile character, was entitled to carry with it such important national consequences. In the subsequent discussions of 1826–7, Great Britain considered it equally due to herself and to other powers to renew her protest against the doctrine of the United States, whilst on the other hand the United States continued to maintain that Gray's discovery of the Columbia river gave, by the acknowledged law and usage of nations, a right to the whole country drained by that river and its tributary streams."

The author then states his own views thus (*id.*, p. 279):

"The principles involved in this position seems to be that the discoverer of a mouth of a river is entitled to the exclusive use of the river; and the exclusive use of the river entitles him to the property of its banks. This is an inversion of the ordinary principles of natural law, which regards rivers and lakes as appendages to a territory, the use of which is necessary for the perfect enjoyment of the territory, and rights of property in them only as acquired through rights of property in the banks."

And again (*id.*, p. 281):

"As to the reasonableness of the rule, if Mr. Rush meant that rivers were the natural and most convenient boundaries of territories, this proposition would command a ready assent. But the result of the principle which he set up as to the extent of the discovery, would be to make the high-lands and not the water courses the territorial limits."

Phillimore, writing of the Oregon Case (Int. Law, 3d ed., i, § 337) says:

"The United States claimed that a nation discovering a country, by entering the mouth of its principal river at the sea-coast, must necessarily be

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allowed to claim and hold as great an extent of the interior country as was described by the course of such principal river and its tributary streams."

But, he says:

"This proposition was strenuously denied by Great Britain upon various grounds:

1. That no such right accrued at all to mere discovery.

Great Britain 'was yet to be informed,' she said, 'under what principles or usage, among the nations of Europe, his having first entered or discovered the mouth of the River Columbia, admitting this to have been the fact, was to carry after it such a portion of the interior country as was alleged.'"

In his comments upon the position assumed by the United States, Phillimore says (*id.*, p. 337):

"If the circumstances had been these, viz. that an actual settlement had been *grafted upon a discovery* made by an authorized public officer of a nation at the mouth of a river, the law would not have been unreasonably applied."

It seems, then, that this writer holds that the benefit of this rule cannot be claimed unless settlement has been "grafted upon a discovery," and that in the case of a discoverer it rests upon the theory that the basin is necessary to the security and integrity of the settlement. In the case in hearing, however, the rule is set up by a second comer against the discoverer, and in a way to destroy the security and integrity of the discoverer's settlements, and to cut him off from the occupancy of the region that was the objective point of his first occupation.

In the Oregon Case Great Britain asserted that the United States could not claim a title by discovery, because Captain Gray, who made the discovery of the Columbia river, was a mere private navigator.

Hall (Int. Law, 4 ed., p. 111), speaking of this matter, says:

"It has been maintained, but it can hardly be conceded, that the whole of a large river basin is so attendant upon the land in the immediate neighbourhood of its outlet that property in it is acquired by merely holding a fort or settlement at the mouth of the river without also holding lands to any distance on either side."

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This writer further holds that, even where there is an extended coast holding, the extent of coast must bear some reasonable proportion to the territory which is claimed in virtue of its possession.

Let us apply this test to the case at bar; and, for that purpose, let us assume that the Dutch coast occupation extended all the way from the mouth of the Essequibo to the mouth of the Moruca, a distance of some 40 miles. As a matter of fact Dutch occupation never attained any such proportions, but had it done so, those 40 miles of coast settlement would, according to the present British pretensions, have represented an interior constructive occupation of some 67,000 square miles; or, in other words, for each mile of actual coast settlement there would have been 1,700 square miles of constructive occupation. If this disproportion should seem great, what shall be said when it is remembered that for almost a century after the Treaty of Munster, except for two short lived settlements on the Pomeroon, from 1658 to 1665, and from 1686 to 1689, such Dutch occupation as there was on the coast west of the Essequibo was limited to a trading post, or else a man shelter, located at times on the Pomeroon and at times on the Moruca or Waquepo? Not until near the close of the last century did settlement extend west along the Arabian Coast to near the Pomeroon; and, by that time Spain had been for already three-quarters of a century in the actual occupation of the Cuyuni, and of many of its tributary streams.

The so-called watershed theory has never, even by its most extravagant advocates, been extended to apply to lateral frontiers. Its application is confined wholly, where it can be applied at all, to the determination of interior limits, never to that of lateral limits in territory parallel with the coast. Here the attempt is made not only to apply it to the headwaters of the Essequibo, but to rivers nearly as large as the Essequibo itself, which run at right angles to the latter and parallel with the coast, and, in fact, rise almost on the very banks of the Orinoco. "It can hardly be

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conceded," says Hall (Int. Law, p. 111), "that the whole of a large river basin is so attendant upon the land in the immediate neighbourhood of its outlet that property in it is acquired by merely holding a fort or settlement at the mouth of the river without also holding lands to any distance on either side." Yet the attempt here is made to found possession of a lateral territory, watered by a river 300 miles long, by plantations that come to an end twelve miles from its mouth and then are stopped by an impassable barrier.

The Dutch Ambassador at Madrid, in making the claim of the West India Company (V. C. II, 135), stated that it was a claim to "the River Essequibo, and all the little rivers which flow into it." Had that been its character, and had the Cuyuni been such a stream as Capoey or Oene, or even as Supenaam, the Spanish Government might have thought it worthy of attention. As it was, they refused even to discuss it.

Hall further shows that the rule as to water courses was based upon the fact that they formerly "were not merely the most convenient, they were the necessary means of penetrating into the interior;" and says that in Africa railroads offer a better access, iand that in that region the "river basins are so arranged that a final division of the continent could hardly be made in accordance with their boundaries."

Where, as here, there is an occupation (whether it be actual or constructive) of the territory upon the upper banks of a river, that occupation is of a part of the geographical unit called the basin, and should be taken, if the rule of unity is observed, to be an occupation of the whole. A settler coming afterwards to the mouth cannot cork up the river. In the cases of the St. Lawrence and of the Mississippi, the United States--and, in the case of the Columbia, Great Britain—asserted and secured the right of the settlers on the upper stretches of these rivers to the free navigation thereof to the sea.

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Of this rule Mr. Twiss (Oregon Case, p. 280) says:

"According to the Civil Law (flumina perennia), as distinguished from streams (rivi), were deemed public, which, like the sea shore, all might use. In an analogous manner, in reference to great rivers flowing into the ocean, a common use is presumed, unless an exclusive title can be made out, either from prescription or the acknowledgement of other states."

Wheaton (Int. Law, p. 291) writing upon this subject, says:

"The right of navigating, for commercial purposes, a river which flows through the territories of different states, is common to all the nations inhabiting the different parts of its banks; but this right of innocent passage being what the text writers call an *imperfect right*, its exercise is necessarily modified by the safety and convenience of the State affected by it, and can only be effectually secured by mutual convention regulating the mode of its exercise."

Turning now to make a brief application of the law to the facts, we remark first that the reason given for the rule in the cases where its application has been supposed to be allowable, shows that it can have no application here. The Essequibo was never "the necessary means of penetrating into the interior," or even the most available means. In fact, by reason of the numerous falls and rapids found in it, and in the Cuyuni, it was an impracticable route for any important commerce. The range of low mountains over which these streams fall makes an interior basin that is in no proper sense a part of the same geographical unit with the coast.

It is indisputably true that at the time when Great Britain claims that this great interior basin became attendant upon the Dutch settlements on the Essequibo, because it was a part of the same geographical unit, neither the Dutch nor any other European nation supposed there was any practicable route by these rivers to the great interior—the Eldorado. Berrio and his Spanish predecessors, and Raleigh, Cabeliau and every other explorer and navigator, rightly designated Santo Thome, and not Essequibo, to be the gateway of the Cuyuni Basin. This route availed itself, for a large part of the way, of the great savannahs, and found an easy

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passage over the range; while that from the Essequibo contended, from start to finish, with dangerous rapids and falls in the river, and an almost impenetrable tropical forest on its banks.

That the Essequibo and Cuyuni are not the natural ways of travel and commerce and settlement, is proved by the fact that neither the Dutch nor British have ever extended their settlements along them. These rivers, with their rapids and falls and forest-clad banks presented the way of greatest resistance to settlement from the Essequibo, and it took the easier way down the river from Kykoveral.

Schomburgk, who, in 1841, passed down the Cuyuni from the Acarabisi, and through the gorge at the eastern corner of this basin, just above the confluence of the Cuyuni and Essequibo, describes that point as "a small range of mountains through which the river has broken itself a passage" (B. C., VII, p. 29). That passage consists of a series of cataracts, by which the river falls two hundred feet in thirty or forty miles, and he nearly lost his life in passing them. Surveyor Perkins lost a man here on one of his expeditions, and says (Timehri, June, 1893) that "it has long "been known as among the most dangerous, if not the most "dangerous, of all the large rivers of British Guiana."

This obstacle has stopped all progress of settlement in this direction.

Schomburgk further says: "But the difficulties which the "Cuyuni presents to navigation, and those tremendous falls "which impede the river in its first day's ascent, will, I fear, "prove a great obstacle to making the fertility of its banks "available to the Colony." (B. C., VII, p. 30.)

A description of the country, published at Demerara in 1843, says: "A short distance above their junction these rivers [Maze-"runi, Cuyuni and Essequibo] become impeded by rapids, above "which they are frequented only by a few wandering Indians." (V. C., vol. iii, p. 406.)

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Mr. Henry I. Perkins, F. R. G. S., Government Surveyor, says of the Cuyuni (*Timehri*, June, 1893, p. 75):

"It has long been known as among the most dangerous, if not *the* most dangerous, of all the larger rivers of British Guiana, and there are times when the height of its waters, either above or below a certain point, gives it every right to claim this unenviable notoriety. My first experience of it was a highly unpleasant one in 1887, when, with a brother surveyor, I spent about four weeks journeying up and down a portion of it, and surveying placer claims on its right bank. On this memorable occasion we lost two boat-hands from dysentery, a third dying on his return to Georgetown from the same disorder, and last but not least, in coming down stream our boat capsized at the Accaio—the lowest fall in the river—where one man was drowned and everything was lost."

"The Cuyuni diggings are somewhat unfortunately situated as regards the regular despatch of supplies to them; for in the heavy rainy season, the river becomes so rapidly flooded and remains at a dangerous height for so long a period, that it is almost impossible for loaded boats to ascend it." (*ib.*, p. 81.)

The Dutch Commandeur wrote, in 1727, that the river was "very dangerous" and that it was not worth while to attempt anything above them (V. C., vol. ii., p. 81). In 1731, he wrote that "The great number of rocks which lie in these two rivers "[Cuyuni and Mazaruni] and which occasion the falls by reason "of the strong stream rushing over them, . . . where-"fore it is impossible to establish any plantations there, although "the soil is very well fitted for it." (V. C., vol. ii., pp. 84–85.)

Mr. im Thurn, in 1880, speaking from personal knowledge, says that beyond the narrow cultivated coast strip,

"is what may be called the timber tract, from which alone timber has as yet been remuneratively brought to market. This extends toward the interior as far as the lowest cataracts on the various rivers. It is at present impossible to cut timber profitably beyond the cataracts, owing to the difficulty of carrying it to market. (V. C., vol. iii, pp. 407–408.)

And again:

"The two remaining tracts [*i. e.*, *above* the lowest cataracts] are ***entirely uninhabited*** except by a few widely-scattered Indians of four or five different tribes." (*ib.*, p. 408.)

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Rodway, speaking of English efforts, since 1884, to establish armed stations in the disputed district, says (Rodway, iii, 280):

"Another move in the same direction was made in 1892, by establishing a boundary post up the Cuyuni, near its junction with Yuruan. Except for its bearing upon the boundary, this post is quite useless and might be abandoned if the question were settled; under present circumstances, however, it is highly desirable that it be kept up, notwithstanding *the fact that the police who reside there have to perform a very hazardous and long journey of forty or fifty days to reach it, and then are cut off from all communication until relieved.*"

Mr. Dixon, a recent visitor to this Yuruan station, thus contrasts the difficulty of reaching the centre of the Cuyuni basin from the English settlements, and the ease with which the same point is reached from the Orinoco. This explains why that region has been Spanish for three centuries, but has never had a Dutch or English settlement within its borders until the recent armed invasion. He says:

"This made me, as an Englishman, feel considerably mortified to think that it takes our Government from five to six weeks to reach their frontier station, whereas the Venezuelan outpost was then being put, and by this time probably is, in direct communication with their capital by road and wire. Also, whereas it costs our Government an immense annual sum to maintain their small number of police at Yuruan on salt and tinned provisions (sent all the way from Bartica Grove, on the Essequibo, in paddled boats), within 200 yards on the other bank Kuyuni is the Venezuelan outpost, supplied with all kinds of fresh food from their cattle farms and plantations." (Jour. Royal Geog. Soc.; Apr., 1895, p. 341.)

Thus, not only has Dutch and English settlement kept close to the coast, but it is the topography of the country which has kept it there. The encircling rim, through which the rivers break only in cataracts, is the obstacle. Clearly, this constitutes *a natural barrier*. For over two hundred years the settlements have never passed and never attempted to pass twenty miles above the confluence of these rivers. Thus history tells us, without a study of the topography, that there is here a natural barrier.

Cabeliau, in 1598—before the Dutch came to Essequibo—

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found the Spaniards building a road towards the interior from Santo Thome, with the purpose of opening the interior basin, and so informed the States General; and that the land of gold could not be reached without engaging the Spaniards there. The spread of the Dutch settlements was not up the river towards the interior. Their only efforts there were for trade.

In the Case of Venezuela (p. 228, § 12) this proposition is stated:

"If a natural barrier exist between the coast region and the interior, that barrier will be the boundary between the two."

To this Great Britain (C.-C., p. 136) responds: "As a general statement this proposition is admitted."

It is not necessary that this barrier should be impassable. It is still a barrier, though rivers have broken over it. The flow of the Colorado through its great canyon did not obliterate the mountain ranges, but rather emphasized them. The river broke a way for itself, but not for commerce.

In a report to the West India Company by E. D. Maurain-Saincterre, engineer in Essequibo, March 19, 1722, he says:

"The ground is even better above in the rivers Essequibo, Mazaruni, and Cuyuni than below; but because they are full of rocks, falls and islands, and much danger is to be feared for large sugar canoes, this is the reason why up to this time the Europeans have not been willing to establish sugar plantations there." (V. C., vol. ii, p. 79.)

In fact, the Dutch drew back, from their first and uppermost plantations, towards the coast. The Secretary in Essequibo, writing to the West India Company, in 1777, says (V. C. ii, 232):

"There are several planters who hold thousands of acres of land which are not under cultivation. For most of the old planters, as soon as the lower lands were brought under cultivation, transferred their plantations which lay above this fort or Flag Island, brought off all their slaves, mills, cattle, etc., and practically abandoned the old plantations; but, in order nevertheless to retain their right, as they fancy, to those upper lands, they sent thither all their old and decrepit slaves, who can be of no use on the new plantations.

Thus one finds above this island (which is distant only one tide from the mouth) not one sugar, coffee or cotton plantations except only that of

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the ex-Councilor S. G. van der Heyden, situated a great tide above this island, at the mouths of the two rivers Mazaruni and Cuyuni.

In these rivers, likewise, just as in the river of Essequibo, properly so-called, there can be found not one plantation which furnishes any products except a little cassava bread, and this of so slight importance as not to deserve mention. And this is also the case with the navigable creeks of Bonnasieke, Arriwary, Supinaam, and Itteribisie, each of which has only one sugar plantation at its mouth, and all the other lands in those creeks and rivers are and remain uncultivated." (V. C., vol. ii, pp. 232–233.)

What was believed to be true, in the earliest days, as to access to the Cuyuni Basin, is still true; and if this whole region was British the Cuyuni Basin would be opened up from the Orinoco and not from the Essequibo.

It was not true in the early days of Guiana, nor is it now, that the possession of the mouth of the Essequibo—even if accompanied by a coast occupation to the Pomeroon—was effective to cut off access to the interior by Spain. Spain found it easier to reach the Cuyuni at the mouth of Acarabisi creek from the Orinoco than the Dutch did from the coast, and Great Britain has found that at the present day the time is shorter from the Orinoco to the advanced Venezuelan posts, than from Essequibo to the British post in the same locality. The reason of the rule by which the river basin is sometimes treated as appurtenant to an extended coast occupation, does not support the British contention here. First, because there was no such prior coast occupation; and, second, because the principle of geographical unity—the ease of access, the closing of the natural gateway—assigns the basin of the Cuyuni to the Orinoco, from which it was first approached. The Cuyuni Basin did not (to use Phillimore's words) "have the occupied seaboard for its natural outlet to other nations."

As Martens has said (Int. Law, pp. 464–5):

"Therefore, it cannot be established as a principle as Bluntschli does—that the occupant has the right to consider as its domain not only the points effectively occupied by it, but moreover the whole territory that

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'according to nature' constitutes, with these points, an organic whole. For example, according to Bluntschli, a country which has seized upon the mouth of a river is master of its whole course.

"The facts, however, may contradict the rules, and it may happen that no application of these latter can be made. It is only necessary to bear in mind that effective occupation creates for the occupant certain rights and imposes on other states corresponding duties."

In the present case, if there were any such rule as that which Bluntschli advocates, the facts contradict the rule, and no application can be made. In this case the area of effective occupation is determined both by barriers on the one hand, and by outlets on the other. To apply a hard and fast rule, as to river systems, to the geographical facts presented by the territory in dispute would be to run counter to the existing physical conditions—conditions which negative the theory that lateral tributaries are necessarily an appurtenance of a settlement on the lowest waters of the main stream.

But if the rule would have applied in case the Dutch and Spanish settlements had been contemporaneous, and each had manifested an intention to occupy the new basin, its operation is effectually prevented by the facts that Spain was the first discoverer, that her settlement had for its avowed purpose the occupation of the basin, that such occupation was reasonably necessary to the integrity and security of her settlement, and that in fact she was the first and the only one to settle the basin. The avowed object of Santo Thome and of all the costly Spanish expeditions into the interior cannot, in conscience or reason, be defeated by a constructive effect to be given to the later Dutch settlement. The States-General had been told by Cabeliau that Spain's purpose was to occupy the interior. In fact there was an actual Spanish occupation of a part of the basin before the Dutch occupation on the coast had attained such proportions as to support any pretence of a constructive occupation of the basin.

The presence of the Spanish missions in the Cuyuni basin, and

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their possible effect in defeating her claim to the whole watershed, is thus referred to in the British Case (p. 163):

"Further to the south the Imataka Mountains and the range of hills constituting the water-shed between the tributaries of the Orinoco and those of the Cuyuni and Massaruni form the boundary of the river basin to which Great Britain is *primâ facie* entitled. But if it be considered that Venezuela is entitled to the region about the Yuruari, *in which the Mission stations were situate,* the Schomburgk line offers a boundary with every advantage of physical features, etc."

We have already seen the state of the Essequibo colony in 1648. It was not until 1658 that the Dutch attempted to occupy the Pomeroon. The plan was a large one, but the failure was even larger; for, in 1665, it was destroyed by the English.

In 1679 the Commandeur in Essequibo writes:

"The river Pomeroon also promises some profit; for, in order to make trial of it, I sent thither in August last one of my soldiers to barter for annatto dye. But there lately came tidings of the approach of a strong fleet of Caribs from the Corentyn with intent to visit this river and Pomeroon, having perhaps a secret understanding with the Caribs here to make a common attack upon us. (This danger, thank Providence, we have escaped; for I now learn from Berbice that they long ago passed this river on their way back from Barima, and, seizing in Berbice an Indian boat, have gone back to their homes again.) On receiving the aforesaid ill tidings I called in to the fort the above-mentioned outlier in Pomeroon, both to save him from being surprised, along with the Company's goods, by these savages and to strengthen ourselves in case of attack. Accordingly he came to the fort on the 8th inst. with all the goods, bringing with him a barrel of annatto dye which he had there bought up. The scare being now over, I shall send him back there within four or five weeks (the dye season not fairly beginning there before that date); and, if the trade prospers, it would not be a bad idea to build there a hut for two or three men, so that they may dwell permanently among the Indians and occupy that river." (V. C., vol. ii, pp. 37-38.)

In 1689 the Commandeur in Essequibo wrote:

"In Pomeroon the Company has nothing to lose but a small bread and yam garden, with five or six decrepit negroes, . . . and the whole force there consists of only nine or ten men." (V. C., vol. ii, pp. 59-60.)

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In the same year the post was practically abandoned, as appears by this resolution of the West India Company:

"It was further resolved that from the colony of Pomeroon shall be removed whatever has been brought thither on behalf of the company, both the employees and the slaves and other commodities, there being left there only three men with a flag for the maintenance of the company's possession at the aforesaid place, and that the aforesaid employees and commodities be transported to Essequibo in order there to be employed for the service of the Company." (V. C., vol. ii, p. 62.)

The condition of things in 1790 is told with particularity in the report of Commissioners Sirtema van Grovestins and Boey:

"The river of Essequibo is cultivated on the eastern side from Bourassiri to Bonnasigue, and on the western side from the Toeloekaboeka to the Supinaam Creek, being a distance of nine thousand six hundred rods. However, many more lands here could be brought under cultivation if the vicinity of the river Orinoco did not prevent it, for the Spaniards there sometimes come with armed boats, called lances [lanchas], as far as Moruca and by force carry away the Indians who dwell there, enslaving them, while on the other hand our negro slaves, when they run away, betake themselves to Orinoco, where they are proclaimed free.

The *colonies of Demerara and Essequibo* therefore form a stretch of *twenty-four* [*Dutch*] *miles* along the coast of Guiana; and, if means could be found to facilitate the inland communication by appropriate canals issuing into the rivers, both for the transportation of products and for the drainage of the lands, this would increase incalculably the land fit for cultivation. (V. C., vol. ii, p. 243.)

The noticeable things here are, that the Spaniards on the Orinoco were asserting by armed expeditions the ownership of Pomeroon; that by reason of this the Dutch could not extend their settlements to that region, and that Demerara and Essequibo combined only occupied "twenty-four Dutch miles along the coast of Guiana."

Now, long before this time the Spaniards had established many missions in the watershed of the Cuyuni, and had asserted and maintained a military control throughout that region.

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Spanish military occupation and surveillance of the lower Cuyuni resulted, in 1772, in the final abandonment of the last Dutch post in that river, three days' journey from the Dutch fort.

We conclude this discussion with the remark that Great Britain is not only asserting here a doctrine, as to river mouth settlements, the reverse of that maintained by her in the Oregon case, but is in the case now at bar denying to Venezuela the benefit of the alleged rule, while claiming it in her own behalf. Spain held the Orinoco, not constructively but actually. In the language of the British Counter-Case (p. 28): "The Spaniards entered, explored, settled and effectively defended the Orinoco." The occupation of the Orinoco and of the Essequibo present two very different cases. The former was "entered, explored, settled and effectively defended" by Spain. Of Essequibo and the Dutch these things cannot be said. If the Orinoco was Spain's—if she owned both its banks, from mouth to source, as she did—then a very mild and reasonable application of the watershed theory would give her the tributary streams—the Waini, the Barima and the Amacura. Her acknowledged dominion over the main stream could not be maintained without these. In the case of the Essequibo, Great Britain seeks to appropriate the main stream and all its tributaries by mere construction, and that apparently before any Dutchman had passed above the tide limit. And yet, admitting Spain's actual, effective dominion of the Orinoco, she denies to Spain two of its tributaries and seeks to appropriate by the seizure of Barima Point the command of the Orinoco itself.

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CHAPTER XX.

MIDDLE DISTANCE AND NATURAL BOUNDARIES.

While no definite use has been made here, so far as we recall, by Great Britain of what is called the rule of the middle distance, it will not be amiss to briefly to state the reason and limits of the rule. It is not a mere rule of compromise—the splitting of the difference—and can have no application to any case where there is a line of right. This great Tribunal is organized to find the line of right, and is required to establish it when found. It cannot omit to do either of these things. It cannot, without finding the line of right, fix upon a middle line; nor, after finding the true boundary, give to one nation that which it has found belonged to another. Before the rule of the middle distance can be used, it must be found that there is no line of right; that neither party has a superior right to the whole or any determinate part of the disputed territory. In that case the middle distance is not the splitting of a difference, but the nearest possible ascertainment of the line of right. It proceeds upon the theory that there is no better right to any part of the territory in dispute. Neither party admits, or even suggests that we have such a case here. In the discussion between Spain and the United States, as to the western boundary of Louisiana, the former rested the suggestion of the middle distance upon the theory that two nations had made discoveries and settlements at some distance from each other, and that neither had a superior claim to the territory in controversy. In the case at bar Spain only has the discoverer's title, while that of the Dutch rests upon conquest, treaty, prescription, or an alleged abandonment of the discoverer's title. But if, in any case of a disputed boundary, the middle distance is to be applied as a basis of compromise, it

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must relate to the beginning of the controversy. If one party has already, over the protest and insistence of the other, split the difference for himself by pushing forward his occupation to the middle distance, it would be an intolerable suggestion that an arbitration tribunal should again give him a middle distance. The rule as to natural boundaries was much, and very strangely, made use of by Schomburgk in his reports, and is still invoked to justify large Dutch and British encroachments. As applied to the British claims here, the rule is of very narrow application, and has relation rather to the field work of the surveyor than to the apportionment of large territories. It assumes that the line of right is approximately on the ridge, or watershed, or river, and that natural line is adopted rather than the nearby artificial one—because it furnishes a more permanent marking than the surveyor's posts. The use of the rule by Schomburgk is very extraordinary. Before he entered upon his survey he had selected his natural boundaries for British Guiana, and distinctly upon the principle that every point of advantage must fall upon the British side of the line. One is filled with wonder as he reads Schomburgk's letter to Governor Light, of July 16, 1839 (B. C. VII, pp., 2-7), to see the partiality shown by the Creator towards Great Britain. Every range and river was so located as to give to her a strategic point and to leave her neighbors defenseless. In every instance the "natural boundaries" beckoned Great Britain forward. If she claimed to one river, the one beyond was the "natural boundary"! If rapacity and injustice could ever be humorous, that letter of Schomburgk would give him new and unsought fame. He solemnly deprecates the "political motives" of the Brazilians, and appropriates the Amacura "to insure the political importance which always would be attached to the mouth of the Orinoco." He criticizes a boundary survey by the Brazilians, because the other Powers interested were not present in order to give their consent to the "extraordinary pretensions" of the one-sided and self-elected Brazilian Boundary

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Commissioners, and forthwith sets about doing the same thing. He determines that Great Britain must have the command of the Orinoco, and must secure the savannahs about the Rupununi, in order to "command an inland navigation which may be extended to the Pacific Ocean." "A glance at the map of South America," he says, "is sufficient to show what advantages Great Britain may expect from these boundaries." He concludes that it is entirely "practicable to run and mark the limits of British Guiana on the system of natural divisions, and that the limits thus defined are in perfect unison with the title of Her Britannic Majesty to the full extent of that territory." What a rare and felicitous happening! Great Britain's rights and her wants accord! But the accord is not casual; her rights were fitted to her needs. Schomburgk, before going to Barima, had given to Great Britain the command of the Orinoco, and his observations there are to be taken in the light of that fact.

It was of this sort of use of the rule of natural boundaries that Phillimore wrote the phrase—"has been much used by powerful military states to cover the unjust spoliation of their weaker neighbors."

Natural boundaries that mark a geographical unit may be properly taken account of in determining the limits of a constructive occupation. But in the case in hearing, a line of right must be found, and when it is found no considerable amount of territory, and no strategic point can be taken from one and given to another by this rule. Only unimportant deviations may be made, and these may not all be at the cost of one party.

SUMMARY.

Thus far, in the discussion of the question of limits upon the theory of Great Britain that all of the disputed territory was, when the Dutch came to Essequibo, *terra nullius;* or, if not, that by the Treaty of Munster the Dutch obtained an equal right with Spain

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to appropriate it by settlement—we have treated chiefly of the principal original settlements of each.

It remains now to see what was done by the Dutch in the way of advancing their settlements within the disputed limits.

We affirm, *first*, that no Dutchman was ever authorized to settle on the coast west of the Moruca, or upon any river entering that coast or the Orinoco, and that no Dutch colony or settlement was ever established there. No colony or settlement of Dutchmen could have been founded there without the authorization of the Dutch West India Company. No Dutchman had any right to go into that region, or to sojourn or trade there without the authorization of that Company. If, without this, he went there he was a trespasser against Dutch law, and could acquire no landed rights; for the West India Company had, as against all Dutchmen, an exclusive right to trade and to plant settlements there. This right the Company strenuously asserted against the Surinam Dutch. The Essequibo and the Pomeroon settlements were authorized by the Zeeland Chamber, but no settlement in the Waini-Barima region was ever authorized. A trade there was authorized and was conducted in large part with the Spaniards, but no act was ever done or authorized looking to colonization in the region we are speaking of. The Dutch records have been remarkably well kept, and they show that the Governor of Essequibo was required to record and to report with commercial exactness his receipts and expenditures. His pay rolls contain a list of all officers and employees, and these were very carefully scrutinized and supervised at home. An attempt by the Governor to found a new settlement without the previous authorization of the Chamber would have promptly ended his career. A new settlement implied a large expenditure — a fort, a garrison and civil officers. The home authorities and the Governor were not clear whether they could claim this region. They were fruitlessly asking each other where the boundary was.

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But there is more than an absence of authorization to any Dutchman to settle there; there is an affirmative statement of what was authorized there. It was a "shelter" and not a post or a settlement. It did not contemplate the use of the soil, or the gathering of settlers about it; and in its very nature was a disclaimer of any purpose to hold the locality against the Spaniards. It had relation to trade only, and to a trade that was not seated, but fugitive. The name and the character of these stationary umbrellas was familiar; and Queen Elizabeth, in 1580, told the Spanish Ambassador that these "shelters" could not confer territorial rights (B. C.-C. App., p. 317). What England then denied to Spain, she now allows to herself.

No Dutchman was ever authorized to go to, or to remain for a season in the Waini-Barima region except for trade or to catch fish or slaves; and, save this temporary "shelter" there never was west of the Moruca any authorized Dutch post, house or structure of any sort.

In 1766 the Court of Policy "forbade that any one hereafter stay in Barima" (V. C., vol. ii, p. 165). In 1768 the Dutch Director-General reported the robbing of "the Widow la Riviere" by Spaniards; and added that "this did not matter very much, because I had strictly forbidden Jan la Riviere to settle between Essequibo and Orinocque, and for greater security, I had this inserted in his pass; he was also forbidden by the Court to settle in Barima." (V. C., vol. ii, p. 176.) And, in 1769, he wrote that the widow of Jan la Riviere, "who against the absolute prohibition of the Court had gone with his slaves to live in Barima," having died there his widow had been "robbed" of everything by the Spaniards, and had returned to Essequibo. (V. C., vol. ii, p. 187.)

We know that smugglers and other disorderly people—some of them probably Dutch—were there for a time. We know that Surinam Dutch went there to trade against the protest of the Commandeur in Essequibo. How many seasons any of these sorts of visitors remained hidden on some one of the interlacing water-

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ways, we do not know, but we do know that neither the West India Company nor any other Dutch governmental authority ever authorized any Dutchman to settle or to appropriate lands there, and that if any one did so his act was not only unauthorized, but in opposition to Dutch authority.

But, if the signs and traditions found by Schomburgk are fully accepted, it remains to be proved that the Dutchman was an Essequibo or Pomeroon Dutchman authorized to be there; for, if he was a fugitive, or a Surinam Dutchman, he had no Dutch right to be there. He was an intruder or a smuggler, whose presence could not create a settlement of the West India Company, or in any way affect the boundary question. The utter lack of any reliable knowledge as to who he was, how he came there, or how long he remained, leads most strongly to the conclusion that he was one who felt that his presence needed to be concealed. Upon such evidence as this a title by settlement certainly cannot be founded. The most westerly Dutch settlement on the coast then was on the Pomeroon river.

In 1802 the English Commandant of Berbice, Demerary and Essequibo speaks of the "River Pomaroon, at the entrance of which is the *furthest* military post, called the post of Morrocco." (B. C. V, p. 172.)

This condition was continued under the British until 1884. There was not the slightest semblance of British influence west of the Moruca until after 1839, about which time the Postholder in the Moruca began to make casual visits to the Barima-Waini region.

The British claim to the coast region west of the Moruca cannot be rested upon an actual occupation by settlement.

We turn now to the interior, to see what part of the disputed territory there, if any, was ever settled or actually occupied by the Dutch. We affirm with confidence that nothing that can, by any stretch of consideration, be properly called a settlement was ever established by the Dutch above the lowest falls of the

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Cuyuni. No Dutch grant of lands above that point was ever made, nor was there any survey or subdivision of lands made looking to individual allotments.

The only structure of any kind raised in the interior of the disputed territory, by the Dutch, was for a postholder's dwelling on the Cuyuni.

Dutch trading posts were temporarily established somewhere on the Cuyuni, from 1754 to 1758; again, from 1766 to 1769, and from 1769 to 1772.

There was never any post in the Mazaruni above Fort Kykoveral, and while there were a few plantations on that river above and near the Fort during the earlier days of the colony, in 1781, the Director-General, in giving a list of plantations, assigns but one to the Mazaruni.

The first attempt on the part of the British to occupy the interior above the lowest falls of the Cuyuni was in 1880, when placer mining was begun on the Puruni. The present police station, at the junction of the Cuyuni and Yuruari rivers, was not established until 1890.

As to Spain's relations to the disputed territory after the Treaty of Munster, they have been discussed in other chapters of this argument. For present purposes it is enough to say that, apart altogether from any question of settlement or control by Spain, her title to that territory was not dependent upon questions of settlement. Upon other considerations, discussed in other chapters, that territory belonged to Spain. It was hers by right of perfected discovery, by the rule of watershed, and upon the principle of security.

In passing, it may be added, especially in the interior, Spanish settlement was greatly advanced after the Treaty of Munster. Missions were established, as we have shown, which were authorized, defended and supported by the Spanish government. Every one of these contemplated the gathering of a village, and the use of the lands for agriculture and for grazing. The place did not

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depend wholly upon imported colonists, but contemplated the bringing of the Indians into the villages, the breaking up of the tribal relations and the establishment of a clerical and civil Spanish control over them. They were not made slaves, but Catholics and Spaniards. Each of these missions sent out its expeditions into more distant parts to gather in the Indians; and the records of the Dutch show that a very extensive and successful grazing industry was established. Horses and cattle were raised in such numbers that the Dutch supplied their needs by purchase from the Spaniards and from a region now claimed by Great Britain to have been Dutch territory. If this region was open to appropriation by settlement, by the first comer, it was appropriated by Spain; for Spain only ever made a settlement within it.

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CONCLUSION.

Venezuela, with great respect but with great confidence, now submits to this High Tribunal the very serious issues involved. She does this in the happy belief that in the short but brilliant history of arbitration tribunals this one will find a conspicuous place, and will recommend to other nations the use of this great agency of peace. Venezuela has no direct representative upon this Tribunal; and, by this fact, it is more nearly assimilated to the great courts of justice from which the idea of representation is wholly absent. No other international tribunal has presented this feature. They have been too much the conferences of representatives, rather than the consultations of judges, to whom the parties are quite indifferent. The one tends to unsatisfactory compromises, the other to decrees that establish rights. In the very constitution, therefore, of this Tribunal we have the strongest appeal to the sense of impartial justice and the surest ground of hope that the judgment may confirm the faith of those who believe that it is possible to bring the nations to a bar that will treat them with the same impartiality that is shown to individual litigants. When that confidence is fully established, the era of a universal peace will be near.

Respectfully submitted,

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Of the following six papers the first four have been prepared by His Excellency Señor Rafael Seijas, formerly Minister of Foreign Affairs of the United States of Venezuela, and the remaining two by the Agent for that Government before the Arbitral Tribunal.

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THE BULL OF POPE ALEXANDER, 1493.

[*Translation.*]

I have read the book sent me by the Ministry for examination, it being the one just received, and entitled "The Diplomatic History of America. Its first chapter, 1452-1493-1494, by Henry Harrisse, London, 4 Trafalgar Square; B. F. Stevens, Publisher, 1897." It seems to be a new edition of the work of Harrisse which is cited in the following extract.

I copy the following from a paper prepared by me in 1886:

"The London *Times* of the 7th March ultimo publishes an opinion on the Venezuelan boundary question, written by Mr. Emil Reich, LL. D, who, on reaching the subject here discussed says:

"'It now remains to inquire into the legal points involved in the present question. Spain, and now Venezuela, base their claim on South American territories on the famous Bull "inter coetera" of Pope Alexander VI (May 4, 1493), and on the Treaty of Tordesillas (June 3, 1494). It does not occur to us to question the power of Pope Alexander to issue such a Bull.'

"There can be no reasonable doubt that then, in the latter half of the 15th century, the Popes were pretty generally considered as the depositaries and exponents of international law."

"That they ceased to be held as universal arbiters in the 16th and still more in the 17th century; that their legal attitude to the acquisition of 'ultramarine' countries was already, in the sixteenth century, most forcibly assailed and impugned by even Spanish teachers of international law, such as Francis de Victoria, Melchior Cano, Dominic Soto, Antonio Raminez, &c.; all that does not legally affect the recognition of the Pope as international arbiter in the latter half of the 15th century.

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"As was done by the present Pope in the arbitration case between Spain and Germany *in re* the Caroline Islands (1885), so every fair critic must proceed now in the case between England and Venezuela—we must apply to historic questions of the 15th century the principles of law of that very century, and of no other. In thus accepting Alexander's Bull as a legal title, we can yet not accept it as a clear title. The line of demarcation drawn by the Pope has never been clearly fixed, and Harrisse has proved that, if anywhere, that line struck the Continent of South America so far west as to exclude the territory between the Orinoco and the Amazon rivers—that is, the Guayanas. To cap this it can be shown that in the long transactions between Spain and Portugal *in re* their boundary disputes in South America in 1750 and 1777, the Bull of the Pope, although directly bearing on the question at issue, was never mentioned at all, *et pour cause*.

The book consists of twenty chapters, as follows:

I. The Papal Grants to Portugal. 1452–1484.
II. Spain asks the Pope for a Grant of the Newly-Discovered Regions. 1493.
III. The Three Bulls of May, 1493.
IV. Alleged Protest of Portugal at Rome.
V. The Bull of Demarcation not "ridiculous."
VI. Spain sends an Embassy of Obedience.
VII. The Fourth Bull of 1493.
VIII. Signing of the Treaty of Tordesillas.
IX. Alleged Partition of the Globe.
X. Columbus and the Treaty of Tordesillas.
XI. Spanish Interpretation of the Treaty of Tordesillas.
XII. Ferrer's Theory.
XIII. The First Tracing of the Demarcation Line.
XIV. The Theory of Enciso.
XV. What is the River Marañon?
XVI. Enciso's Geographical Description.

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XVII. The Marañon and the Maranhão.
XVIII. Spanish Ruling at Badajoz.
XIX. The Demarcation Line in Spanish Maps.
XX. The Official Model Map.
Conclusions.
Notes.

Of these chapters the fifth is so interesting that it has seemed well to translate it in full, and include the translation herewith, pp. .

It is also well to study the conclusions, which are as follows:

Conclusions.

Notwithstanding the subsequent Bulls and treaties between Spain and Portugal, all attempts to determine the place where the Demarcation Line was to pass in America have been based upon the stipulations of the Treaty of Tordesillas (1494).

The location of this divisional line has varied according to the notions which the cosmographers of the times had of the circumference of the earth and of the length of the marine league.

But in every instance save one the Line was fixed east of both mouths of the Amazon river.

Thus do we find that, according to Jaime Ferrer (1495), the meridian of the Demarcation Line *on his sphere* was in 42° 25′, west of Greenwich, and *on our sphere* in 45° 37′, also west of Greenwich.

According to Martin Fernandez de Enciso (1518), that meridian, *on his sphere*, was in 47° 24′ west of Greenwich, and *on our sphere* in 45° 38′, also west of Greenwich.

According to the experts convened at the Badajoz Junta (Duran, Sebastian Cabot, etc., in 1524), the meridian of the Line, *on their sphere*, was in 47° 17′ west of Greenwich, and *on our sphere* in 46° 36′ west of Greenwich.

According to Diego Ribeiro and the Sevillian Hydrography of the 16th century (1529 usque * * *), the meridian of the Line,

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on their sphere, was in 44° 45′ west of Greenwich, and *on our sphere* in 49° 45′, east of the western mouth only.

Yet, according to Alonzo de Chaves and the Padron General, *as interpreted by Oviedo* (1545), the meridian of the Line on that model chart was in a longitude seeming to correspond, *on our sphere* with 45° 17′ west of Greenwich, which locates the Line east of both mouths of the Amazona.

As to the Portuguese cosmographers, they place the Line, judging from its position in the Cantino map, (1502), in a longitude apparently corresponding, *on our sphere*, with 42° 30′ west of Greenwich."

It results, then, that Guiana, lying to the west of this meridian, belonged to Spain.

The British Case says that England, France, and Holland repudiated the grants made by the Bulls.

But the book examined proves that in former times Great Britain recognized them, and to one of them she owes the acquisition of Ireland.

Dr. Quijano Otero upholds the Bulls in his historical report upon the boundaries between Colombia and Brazil, claiming that all Christian Princes have recognized their validity, and citing the case of Edward IV of England.

Their validity is also admitted, as has been shown, by the English lawyer, Emil Reich.

And it is also admitted by the United States of America, since they place the Bull of Alexander VI at the head of the Constitution of Florida, which Spain ceded to them in 1819. See their official publication —*Federal and State Constitutions.*

That document also figures in the Case of the Argentine Republic in its recent boundary question with Brazil, decided by the arbitral award of the President of the United States of America.

CARACAS, May 10, 1898.

(Signed) RAFAEL SEIJAS.

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The Bull of Demarcation not Ridiculous.*

In our days, after four centuries, the power which the popes claimed to exercise regarding the paramount sovereignty over the islands of the world, appears to us excessive and singular. It is not without surprise, therefore, especially among Protestant nations, that Venezuela, for instance, is seen at such a late date to appeal to a papal grant as the source of her rights over Guiana in the present conflict with England. But it is evident that to judge the question with impartiality, we must carry our thoughts back to the time when the donation was made to Spain, and not consider it with the ideas which prevail to-day.

Apostolical letters constituted in a great measure at the close of the fifteenth century what might be termed the ruling law of Europe, since they were based upon traditions, as well as rules which were universally deemed to be equitable, or, at all events, received as such by all European nations. England, which now describes that supreme authority and its logical, direct and immediate consequences as "comical" and "ridiculous," yielded to it formerly with as much readiness and respect as any other nation. Nay, during several centuries, her historians believed, and a number still believe it, that the rights of Great Britain over Ireland had precisely the same origin as the rights claimed by Venezuela over a part of British Guiana. And so it is, historically.

In the "Metalogicus" of John of Salisbury can be read the following statement: "At my request the Pope granted and gave to the illustrious King of England, Henry II., Ireland to possess by an hereditary title, as is shown by his Letters, which are preserved to this day. For all those islands, by virtue of a very ancient right, are considered to belong to the Roman Church, in

* This article, pp. vii–x, entitled *The Bull of demarcation not ridiculous*, is a reprint of Chapter V. of a work entitled The Diplomatic History of America. London. B. F. Stevens, 1897.

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consequence of the donation made by Constantine, who founded and endowed that Church. Besides, Pope Adrian sent through me a golden ring adorned with a gem of great value, in proof of the right to govern Ireland."

One of the letters mentioned by John of Salisbury is evidently the Bull *Laudabiliter*, inserted by Baronius and by Rymer in their collections, under the date of 1155. We notice in that document, among the reasons of Adrian IV. for granting to Henry II. the kingdom which he was preparing to conquer, two of those adduced by Alexander VI. in the Bull granting the New World to Ferdinand and Isabella, viz.: for the strengthening of the Church, and the spread of the Christian religion.

The authenticity of a part of that apostolic letter is now contested, and not without cogent arguments. But it cannot be denied that the Bull *Laudabiliter* well expresses the sentiments which, as regards the alleged primordial rights of the Holy See, were recognized by European nations in general, and England in particular. Even if, as several scholars of note say, the Bull had been invented or interpolated by Henry II., we are bound to infer from such a deception that the sovereignty of the popes, at least over the islands of the world, was recognized in the British Isles as well as anywhere else. Otherwise, of what use would have been the supposed interpolation?

Further, on the Sunday preceding the Feast of the Assumption in 1172, Henry II., in the Cathedral of Avranches, before the legates, bishops, barons, and people, his hand on the Gospels, placed his own kingdom of England and all its dependencies under the pontificial sovereignty. The following year he was more explicit still. In a letter addressed to Pope Alexander III., in 1173, the authenticity of which has not been questioned, he says to the pontiff: "The Kingdom of England belongs to your jurisdiction; and as to the obligation of feudal right, I acknowledge myself to be the subject of you alone." It was not therefore a mere spiritual sovereignty, but one paramount and absolute.

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Under the circumstances, it is evident that a king who declared himself to be, in such terms, a mere vassal of the Pope would not have acted inconsistently in asking of him the grant of the Kingdom of Ireland which he coveted.

This submission to the rights or pretensions of the papacy was not limited in England to the Plantagenets. It continued in the Houses of Lancaster and York. Such, at least, was the case with the first Tudor. The five embassies of obedience which Henry VII. sent to Rome from 1485 to 1493, prove his catholic deference. It is no exaggeration therefore to say that if the auditor of the Rota, Jerome Porcio, had kept his promise to publish the discourse "bene et eleganter compositum," which was pronounced by John Sherwood, Bishop of Durham, when, December 14, 1492, he came with Giovanni Gigli, of Lucca, to place the oath of obedience for Henry Tudor in the hands of Alexander VI., we should find in his oration the same expressions used in the discourses pronounced about the same time by the ambassadors of the Catholic Sovereigns. And just before the time when Borgia granted to Ferdinand and Isabella the countries recently discovered by Christopher Columbus, England still took as a basis for her right of sovereignty over Ireland, the Bull *Laudabiliter*, that is, an authority derived from the same principle and source.

Again, the sending by Henry VII. of John Cabot four years afterwards to discover Cathay does not militate against his regard for the papal authority in that respect. The King of England doubtless interpreted the rights conceded to Spain and Portugal as not excluding in the main the search by other nations for new lands and islands. The restrictions set forth in the Bulls applied only to the discoveries actually accomplished by those two powers. This we see by the fact that Henry VII. imposes as a primary condition the going only to regions heretofore unknown of all Christians: "Quae christianis omnibus ante hæc tempora fuerunt incognitæ." These are almost the terms of the Bulls *inter cætera*. But those discoveries once accomplished, they required the

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confirmation and vesting from the Pope, according to the then custom in Europe.

At that time Henry VII. entertained sincere feelings of respect and gratitude for the papacy. He had not forgotten the eminent service rendered to him only a few years before by Innocent VIII. When, after the Battle of Bosworth, wishing to extinguish forever the dissensions existing between the Houses of York and Lancaster, by marrying his cousin, the daughter of Edward III., he had not only obtained, without difficulty, the required dispensation, but by sending Giacomo Passarelli to London, and by the famous Bull *ineffabilis sedentis*, the Pope had lent him powerful aid and consecrated the new dynasty.

Under such circumstances Henry Tudor would not have disregarded the decisions of the Court of Rome, with which he never ceased to be in the best of terms, as is shown by the frequent embassies of obedience which he sent him at the end of the fifteenth century.

It is true that by what we know, through Burchard and Infessura, of the orations which were pronounced at Rome by the special envoys of the King of England, particularly that of May 1, 1504, on the occasion of the accession of Julius II., we gather that no mention is made of the countries discovered in the northwest. But the expeditions of John Cabot, of the brothers Fernandez, and of Bristol shipowners, had yielded no such results as Henry VII. cared to secure. Those voyages to Labrador and Newfoundland, where the navigators sailing under the English flag had scarcely found anything else than barren countries, icebergs and white bears, resulted neither in profits nor expectations. This is the reason why we do not see England put forward Cabot's expedition as the ground of her rights to the sovereignty of North America until a century afterwards, and then chiefly to thwart the efforts of France in colonizing Canada and the adjacent regions.

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COMMENTS AND CRITICISMS ON THE BRITISH CASE.

[*Translation.*]

The British Case dedicates an article to "Papal Grants." It calls attention to that of Alexander VI to Spain, the prior one of Nicholas V in favor of Portugal, the controversies between that nation and Spain, and the treaty concluded between them at Tordesillas in 1494. It then states that by the Treaty of Madrid, 1750, Article 1, all rights which rested upon the Bull of 1493, the Treaty of Tordesillas and others, were put aside; and by subsequent articles the right of the two Powers *inter se* were declared anew. That the grants made to Spain by the Papal Bulls were entirely repudiated by England, France and Holland. That Calvo, treating of the pretensions of Portugal in Africa without actually resting upon the Papal title, observes parenthetically that the Bulls have, however, "a judicial character with relaxation to the epoch in which they were published"; that with this exception all the writers from Grotius down considered those Bulls as binding only, if at all, upon Spain and Portugal, but utterly inoperative as regarding other powers. That Francis I of France, and Elizabeth, of England, both protested against these claims, and consequently they have ignored them; and finally, that Calhoun, in the course of the Oregon question, wrote as follows:

"When this continent was first discovered * * * Spain claimed the whole in virtue of the grant of the Pope, but a claim so extravagant and unreasonable was not acquiesced in, and could not long be maintained."

It does not appear that there is much accuracy in the preceding allegations, particularly if we have before us the said treaty of 1670, by which Great Britain received from Spain the confirmation of that which at that time the British King or his subjects possessed in America; which was agreeing that America and her adjacent islands in fact belonged to Spain, whether this title was

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derived from the grants of the Pope or from discoveries prior and subsequent thereto.

This case refers to a passage of Calvo, Section 270, in which he says, parenthetically, after citing the bulls, that "the importance of the judicial character of these documents with respect to the epoch in which they were published cannot be denied" (the words, however, not being given in full), which show, it is said, that the publicist referred to does not found a title upon them; but Calvo in other places speaks more explicitly. For example, on page 24 of the introduction to his work, or page 283, Section 283 in the first, he writes:

"This important question of the right of possession and sovereignty over recently discovered lands shows the character of the political relations which European States preserved toward the Roman Pontiff, and that, until a direct and special agreement was entered into, neither Spain nor Portugal *hesitated to accept the competency and authority of Alexander VI., who disposed at will of* the ownership of the regions, islands and continents which the genius of navigators might reveal to the world."

In Section 283 he is even more positive and emphatic, as he expresses himself in these terms:

"*The public law of Europe in the latter part of the Middle Ages was completely dominated by the Church; the Pope was considered hierarchically as the supreme authority in the determination of international questions.* On the other hand, in order better to justify appropriation by way of conquest, it was admitted that the Christian nations had an implicit and absolute right of dominion over the pagan nations. From the combination of these principles was derived the situation created toward the American aborigines, according to the European nations, by the right of discovery and the celebrated Bull of Alexander VI., which, by means of the line drawn at a distance of three hundred leagues to the west of the Azores, fixed the territories destined to belong to the crowns of Spain and Portugal respectively. It is known that later, with a view to settling the disagreements which had arisen between the interested parties, the imaginary line was extended to three hundred and fifty leagues west of the same islands, thus legitimatizing the pretensions of the Portuguese to the sovereignty of Brazil.

However, the European domination over the lands and islands of the

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new world does not rest exclusively upon the decisions of the Holy See and the precepts of canonical law; they had also another foundation, which Spain herself has invoked more than once in support of her rights to the territories of which her bold navigators had succeeded in taking possession. It was unlikely that France, England and Holland, imbued with a desire to create a colonial dominion and to open new fields for their commerce, should avail themselves of the same principles; and thus it was that there broke forth those bloody maritime wars which characterised nearly the entire seventeenth and a part of the eighteenth centuries."

On the other hand, the book of Harrisse, which is spoken of in a different paper, proves how far the veneration of the British for the acts of the Pope as supreme legislator extended, and proves, also, that to a Bull they owed the acquisition of Ireland. If the Popes had the right to make grants in favor of England it would be absurd not to admit that they had the power to make like grants to Spain.

As to Grotius, he was a Dutchman, and wrote with the earnest desire to justify the conduct of his nation in America and elsewhere.

It is not true that the publicist Calvo alone concedes value to the acts of the Pope in these times.

Ch. Salomon, in his work "Occupation of Territories without an Owner," published in Paris in 1889, has for the first chapter the following:

"Period of the Bulls." "Summary. 8, Epoch of the Great Discoveries. 9, The Bulls. 10, The Bulls of Alexander VI. 11, Treaty of Tordesillas. 12, *Principles applied during this period.* 13, The rights of the natives,—Victoria. 14, Analysis of the dissertation upon Victoria. First part: The Indians were the proprietors and sovereigns of the soil which they occupied. 15. Second part: Analysis of the titles invoked by the Spaniards to establish the validity of their taking possession. 16, Third part: What are the titles which may justify such taking of possession."

In number 11 he says: "We have to give an opinion upon the different Bulls and the treaties which affected the partition of the world between Portugal and Spain. The principles which inspired them would hardly find a partisan in our day, and on this point we agree with the opinion of

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Cauchy: *It is necessary, if one wishes to understand their spirit and appreciate their value, to take care not to study them in the light of modern ideas.* In the practical point of view, the Bull of Alexander VI. has found defenders even down to our own times. Bentham, impressed with the difficulties presented by the theory of discovery and the occupation as it was understood at the period in which he wrote, eulogizes it in a manner apparently sincere. Sumner-Maine is not far from agreeing with his opinion."

Number 12 is to the following effect: "The doctrine of the period with which we are occupied may be reduced to four propositions: (a.) *The Pope has the right to dispose to whomsoever he may choose all the lands situated outside of the civilized world, whether discovered or not; all property as well as all sovereignty proceeds to him.* These two ideas, on the other hand, are confounded; (b) the acquisition of those immense territories, unknown up to that time, is not by reason of discovery nor by occupation, but to a donation graciously given by the Pope. So that the title to possession is derivative and not original. The donation is always revocable if the conditions under which it was given are not observed; (c) the Christian only can possess and be a proprietor; only the Christian state enjoys the rights of sovereignty; (d) the pagan natives have no rights."

According to this the writer deems applicable to the questions which originated at the time those doctrines were in vogue, the principles then prevailing.

Of the same opinion is Cauchy, cited by Salomon. In effect, the former, in the article entitled "Bulls of Partition," writes with regard to that of Alexander VI as follows:

"It is one of the last and most solemn occasions in which the Papacy intervened under color of religious interests, in the settlement of the temporal affairs of the crowns. *That act has been too much judged according to our modern ideas, instead of applying to it, on the contrary, the ideas which had for such a long time prevailed in Europe, whose empire, enfeebled by degrees in a part of Germany and other great central States, yet preserved itself unimpaired in the Spanish Peninsula.*"

In a note added at the foot of this article we find:

"The Kings of Portugal submitted the legitimacy of that discovery and possession to the judgment of the Pope, the supreme common judge selected in those times as an arbitrator by all the kings in Christendom, in their

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differences. (*Investigations as to the priority of discovery of the countries situated upon the western coast of Africa beyond Cape Bojador, by Vicount de Santarem, p.* 66.)

"Grotius himself was inclined to consider the *Bulls of Partition* as a form of transaction between the two crowns rather than an exclusive attribute of dominion. Or, it may be said that this decision is without force, or, *which is not less credible,* that the desire of the Pontiff was to intercede in the Castilian-Portuguese controversy rather than to in anywise prejudice the rights of others."

The jurist, Emil Reich, in his opinion upon the Guiana question published in the *London Times* of March 7, 1896, declared that the power of Pope Alexander VI to grant the Bull of 1493 could not be questioned.

If Calhoun really wrote that which is attributed to him, yet another Secretary of State of the American Union, Upshur, stated in 1843:

"How far the mere discovery of a territory which is either unsettled, or settled only by savages, gives a right to it, is a question which neither the law nor the usages of nations has yet definitely settled. The opinions of mankind, upon this point, have undergone very great changes with the progress of knowledge and civilization. Yet it will scarcely be denied that rights, acquired by the general consent of civilized nations, even under the erroneous views of an unenlightened age, are protected against the changes of opinion resulting merely from the more liberal or the more just views of after times. The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations *as understood at that time,* and not by the improved and more enlightened opinion of three centuries later." [Wharton's Digest, Sec. 2.]

Washington Irving, cited by Rodway and Watt, "Annals of Guiana," affirms that:

"During the Crusades a doctrine had been established among the Christian princes" according to which "the Pope, from his supreme authority over all temporal things, was considered as empowered to dispose of all heathen lands to such potentates as would engage to reduce them to the dominion of the church, and to propagate the true faith among their benighted inhabitants."

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The Colombian publicist, Señor Jose Maria Quijano Otero, in his report on the boundary between Colombia and Brazil writes:

"All Christian princes recognized the validity of these Bulls, and it is even affirmed that some British merchants having desired to carry on trade with Guinea, the King of Portugal, John II., called upon Edward IV., King of England, to impede such trade, basing his demand upon the dominion conceded to him over that territory by a Papal Bull. The prohibition was carried into effect, the British monarch being convinced of the claimant's rights."

He cities in support of him Hakluyt's Navigations, Voyages and Traffics of the English; Vol. II., Part II., page 2.

The United States acquired Florida by purchase from Spain in 1819, and soon after she entered into the membership in the American Union. In the book entitled "Federal Constitutions of the United States, Colonial Laws, and other organic laws of the States," compiled pursuant to the order of the Senate of the United States by Ben Perley Poore, in setting forth the constitution of Florida he places before it the privileges conceded to Columbus by the King of Spain on April 3, 1492; the Bull of Pope Alexander VI., of 1493, which granted America to Spain; the treaty of 1795, between her and the United States, and finally the treaty of February 22, 1819, relating to the cession of Florida.

What the British Case says regarding the Treaty of Madrid of 1750 is completely overturned by the observation that, when it declares that this Treaty shall be the only basis for the division of the dominions of Spain and Portugal in America, and agrees to declare annulled any right and action which the two crowns could found upon the Bull of Alexander VI., and the Treaties of Tordesillas, of Lisbon, or the agreement executed at Zaragoza, and of any other treaties, conventions and promises, it adds that all of them, as far as they refer to the line of demarcation, should be void and of no effect, *but should remain in full force and vigor in every other particular.*

It thus annulled the basis of the line of demarcation, but not

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the gift of the Dominion of America and other places made to the two crowns.

To the same end, it is claimed that only acquisitive prescription is applicable to nations, and in no manner free prescription. Because of this, and for the reason that the Treaty of Munster did not authorize Holland to conquer territory in Guiana that Spain deemed to be hers, and because that document prohibited either of the two parties selling and trafficking in the places possessed by the other, including therein those taken from Holland in Brazil by the Portuguese; it has been deduced that such prohibition has always been in force, and that in consequence thereof the Dutch could not, without violating it, occupy places that were not among those ceded to them by the Treaty of Munster, that is to say, Kykoveral and the mouth of the Essequibo.

Those arguments may have so much more effect, in view of Rule (a) of the Treaty of Arbitration, which does not impose upon the judges the obligation of considering exclusive political control of a district or its effective colonization as equivalent to prescription, but gives them permission to do so. Of this permission they will or will not make use, according to the reasons which one or the other party may present to them. Those here set forth may incline them not to make use of this permission.

Prescription is subject to certain conditions; one of them should be applicable to the case here. For example, it cannot take place with regard to the sea, as was sustained by Great Britain in the question of the fur seals of Bering Sea; neither can it have the effect of relieving the fulfillment of obligations of a perpetual character agreed upon in treaties; much less, when in addition to what is contained in the Treaty of Munster, there exists that of Utrecht of 1713, in which the following was agreed upon:

"On the contrary, that the Spanish Dominions in the West Indies may be preserved whole and entire, the Queen of Great Britain engages that she will endeavor, and give assistance to the Spaniards, that the ancient

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limits of their dominions in the West Indies be restored and settled as they stood in the time of the aforesaid Catholic King, Charles II; and if it shall appear that they have in any manner, or under any pretense, been broken into, and lessened in any part since the death of the aforesaid Catholic King, Charles II." [That was in 1700.]

to which may be added that by the Treaty of October 28, 1790, it was agreed between Spain and England [Article VI.] that "with respect to the Eastern and Western Coasts of South America, and to the islands adjacent, that no settlement shall be formed hereafter, by the respective Subjects, in such parts of those Coasts as are situated, to the South of the parts of the same Coasts, and of the Islands adjacent, which are already occupied by Spain; provided that the same respective Subjects shall retain the liberty of landing on the Coasts and Islands so situated, for the purpose of their Fishery and erecting their huts, and other temporary buildings, serving only for these purposes."

According to the first of these articles the Dutch were prevented from making acquisitions in Guiana that should alter the *status quo* of 1700; and in case of their doing so, England should aid Spain in re-establishing things to their former status.

In conformity with the second, England, or her subjects, were prohibited from forming settlements on the coast to the Southward of the Orinoco, occupied as it was by Spain; a prohibition which must have been in force since 1796, when Great Britain captured the Dutch colonies in Guiana and retained them except for a brief interval between 1802 and 1803. (1)

As we are now speaking of prescription, it would be well to bear in mind the argument employed in the Venezuelan Case on page 229. It reads as follows:

"Venezuela has accepted this rule, but she submits and will claim that *time* is but one of many elements essential to create title by prescription. Prescription to be effective against nations, as against individuals, must be *bona fide*, public, notorious, adverse, exclusive, peaceful, continuous,

(1). We believe this corroborates the proposition of law set forth in the Venezuelan Case under No. 18, page 229.

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uncontested, and maintained under a claim of right. Rule (*a*) fixes fifty years as the *period* of prescription, but leaves the other elements unimpaired."

It would be well to enumerate in that connection each and every one of the protests of Venezuela, and other acts of herself and of Spain which are opposed to the application of the rule.

The same may likewise be observed with regard to what is written on page 236 of the said Case, which contains this argument;

"The present occupation by British subjects and persons under British protection having been effected subsequent to 1880, in the interior, and subsequent to 1884 on the coast, and having been undertaken after due warning from the Venezuelan Government that titles thus sought to be acquired would not be recognized by it, and after notice from the British Government that persons so entering into said territory must do so at their own peril, said subject and persons may be regarded by Venezuela as mere trespassers, and Venezuela is under no obligation to recognize any British titles which such subjects or persons may have acquired to lands situate within said territory."

The British Case contains the following statement:

"The Venezuelan Government were aware of the position of the boundary posts erected by Schomburgk, and made remonstrances to Her Majesty's Government upon the subject."

It would not have been improper to add, that not alone did Venezuela protest against the placing of the posts, but also secured an order for their removal, together with the declaration that they did not signify any act of jurisdiction, being merely a preliminary step subject to future discussion between the two Governments. Further than this, the British line does not pass through Barima, but through the Amacuro, a river situated to the west of the other. Until 1886 the Republic had no notice of such a line, and even then not because Great Britain informed her of it. It was the Governor of British Guiana who mentioned it in the reply given by his secretary to the Venezuelan Commissioners, Dr. Jesus Muñoz Tebar and General Santiago Rodill, through the Consul of this country in Georgetown on January 8, 1887.

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In the British Case it is hinted that Venezuela should not be permitted to make use of the propositions of Lord Aberdeen in 1844, nor of Lord Granville in 1881, because she did not accept them, and has not desired any compromise, nor anything but the decision of the legal question; and because they were made in a spirit of indulgence and great concession in the hope of a settlement, and for the maintenance of friendly relations. But Venezuela must say likewise with regard to the offer of compromise presented by her Minister, Dr. Jose Maria Rojas, on February 21, 1881, and which is spoken of in the memorandum which General Guzman Blanco attached to his note of July 29, 1896, to Lord Rosebery, and which is inserted in the Case of the Republic under No. 591, page 251.

In Volume VI. of the Appendix to the British Case is inserted a document entitled "Decree of the Congress of Angostura —a Declaration upon the Division of the Territory of the Missions"—and is taken from the "Documents for the History of the Life of the Liberator," Volume V, page 700. It is, in fact, bound in said book, and was dedicated by the Permanent Committee of the Sovereign Congress appointed to examine the report made by the Chief Commissioner of the Missions of the Caroni as to the number of districts of which each one should be composed. They are reduced to five; that of the East, including the towns of Palmar, Cumamo, Miamo, Carapo, Tupuquen, Turmeemo and Cura; that of the Center, including the towns of Altagracia, San Antonio, Guro, Tupapui, Upata and Santa Maria; that of the South, containing those of Guacipati, Pastora, Ayma, Avechcia, Puedpa, Santa Clara, San Serafin and San Pedro de las Bocas; and that of the Lower Caroni, containing those of Caruache, Murucuri, Caroni, San Felix and San Miguel; and those of the Lower Orinoco, containing those of Puga, Piacoa, Santa Catalina, Sacopana and all of the villages of the Indians of those streams.

The authenticity of this document cannot be doubted, published as it was by General Jose Felix Blanco, in charge of those

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Missions, but it was not by the Congress of Angostura, but by the Permanent Committee, which, as has been seen, had legislative powers. It is well to observe that the measure referred to the Missions of the Coroni exclusively, not to the other Spanish Missions established in the territory of Guiana.

In the same official table of the Missions of Guiana in the Lower Orinoco, after the Capuchin Missions had been suppressed by the Spanish Cortes, in 1813, which is dated 1816, and reproduced in the British Case, Volume VI, page 6, are included those of Santa Cruz del Calvario, San Antonio de Huiscatome, San Miguel de Unata and San Isidro de Barceloneta, which are not mentioned in the decree of the permanent committee of the Congress of Angostura, which only mentions twenty-seven.

In the same category are found those of Casacoima, Aguacagua, Uyacoa, Tupura, Payaraima, Suay, &c. Fifty-seven of them appear on map No. 15 of the United States Commission at Washington.

This document is probably produced for the purpose of denying the value of the work, which brought to light the fact that three Spanish Missions had existed, one in Mawaken, in the Siparuni, an affluent of the Essequibo; another in Wenamu, a tributary of the Cuyuni, and another called Queribura, in the Mazaruni, none of which are shown in the decree referred to.

But this may be answered by Article 2, of the Treaty of March 30, 1848, in which Spain recognizes the Republic of Venezuela as a free, sovereign and independent nation, composed of the provinces of Margarita, Guayana, Cumana, Barcelona, Caracas, Carabobo, Barquisimeto, Barinas, Apure Mérida, Trujuillo *and any other territories and islands that may belong to her.*

Venezuela is the owner of many islands, and no one will dispute her title to them because their names do not appear in this Treaty.

Better still, in former years several Anglo-Americans established themselves in the Island of Aves, near that of Saba, that

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no law had included among those belonging to Venezuela, and this Government, under the claim of title, expelled them therefrom. At the same time, Holland, to which Saba belongs, claimed it as her own, and agreed to submit the dispute to the arbitration of Spain. The evidence of both parties having examined, she decided, on the 30th of June, 1865, that the island belonged to the Republic of Venezuela, but with the burden of indemnifying Holland for the fishery that her subjects should cease to enjoy, if in effect they were deprived of it. The following considerations are worthy of note:

"Considering that Venezuela, on her part, bases her right principally on that of Spain, before the said Republic was constituted an independent State, *and although it appears also, that Spain did not materially occupy the territory of the Aves Island, it undoubtedly belonged to her* as part of the West Indies which were under the dominion of the Kings of Spain according to Law 15, Chapter 15, Book 2, of the 'Recopilacion de Indias.' Considering that the Aves Island must have formed part of the territory under the jurisdiction of the Court of Caracas, when the latter was created June 13, 1786, and that when Venezuela became an independent nation, she did so with the territory of the Captaincy General of the same name, declaring afterward that all the regulations adopted by the Spanish Government up to 1808, were in force in the new State; wherefore the Aves Island could be considered part of the Spanish province of Venezuela. Considering that, even leaving out the above statement, it appears, nevertheless, *that although it can be said that the Aves Island was never actually occupied by Spain or inhabited by Spaniards*, neither is the temporary residence thereon of some natives of Sabá and Saint Eustace, more than an accidental occupation which does not constitute possession; for even though the island is not capable of permanent occupation, on account of the floods to which it is exposed, if the Dutch, supposing it to be deserted had settled upon it with the purpose of permanent occupation, they would have erected some buildings, and would have endeavored to render the island constantly habitable; neither of which was done. And considering, finally, that the government of the Netherlands had done nothing on said island but utilize the fishing by its colonists, whilst the government of Venezuela has been the first to maintain an armed force there, and to perform acts of sovereignty, thus confirming the dominion she acquired through a general title derived from Spain; it is our opinion, it conformity with that of our Ministerial Council,

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after hearing the decision of our whole Council of State, that the ownership of the island in question belongs to the Republic of Venezuela, leaving to her the charge of indemnity for the fishing which the Dutch may fail to profit by, if, in truth, they are prevented from utilizing it, in which case the average of the net annual proceeds of the fishing in the last five years, capitalized at 5% interest will serve as a rate of valuation for said indemnity." [VENEZUELAN INTERNATIONAL LAW—BRITISH BOUNDARIES OF GUAYANA, R. F. SEIJAS (p. 333).]

The existence of the three missions or posts above named is ascertained from ancient Dutch documents discovered by Professor Burr; and these cannot be impugned by the British, because they adduce in their favor others taken from the same Dutch archives, and of this same kind; much less when they do not give any better reason for their denial than the assertion of their own functionary, Mr. McTurk, that these settlements never existed.

In Volume VII of the Appendix to the British Case there is given a chronologic list of the principal maps of Guiana. Among them is found the map of the Governor of that Province, Don Manuel Centurion, prepared in 1770, and bearing the following title: "General Plan of the Province of Guiana, as accurate as possible, and with respect to its wide circumference and unknown center, prepared with the information acquired up to December 31, 1870, by the Commandant General thereof, Don Manuel Centurion." This plan is reproduced in the Atlas accompanying the British Case under No. 24. It bears the date December 31, 1770, and is the same as one of the three which this Government has, but there is here another map of this same Centurion, prepared, it is said, upon more certain information and better acquaintance required practically up to April 5, 1770, which is its date. This map shows four fortresses without name, the villages or towns of San Felipe, Esmeralda and six more without name, the stronghold of San Carlos, the Jesuit Missions of Santa Barbara and nine more without names; eighteen missions of the Capuchins without the names, and seven missions of the Franciscan Observants

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without names—in all thirty-five; a presidio without name, four barracks without name. Also, and differing from the other map reproduced by Great Britain, the following lands are shown to be under cultivation: two [plantations] on the banks of the Essequibo; one on each bank of the Surinam; one on the left bank and two on the right bank of the Copenham; two on the right and one on the left of the Corentin; one on each bank of the Berbi, and one on the left bank of the Demarari.

It is understood that these are Dutch plantations and it is noted that none of them are to be found on the banks of the Moroco, nor of the Pomeroon.

On the map of Centurion this note is placed in the British document:

"On this map, drawn to illustrate Centurion's reports and recommendations, the boundary is drawn in accordance with the extreme Spanish view, viz., from the right bank of the Moruka, past the source of the Povaron (Pomeroon), crossing the Essequibo a few miles above its junction with the Massaruni, and then turning almost due east, so, as to confine the Dutch Colonies to a strip of coast, and cut off the whole Hinterland.

The Mission stations are marked, but not named, and are shown as lying between the head-waters of the Yuruari, the course of the Imataka, and the source of the Caroni River. St. Thomé is at Angostura, and there is no mark of Spanish occupation east of the Orinoco, save the Missions."

In the first place, if the map is drawn showing the line between Spain and Holland to be at the Moroco, this is only to represent possession in fact. As to *right*, what Centurion thought has been shown in the following report sent to Spain on November 11, 1773, in pursuance of the Royal Order of July 24, 1772. It reads as follows:

"In punctual and complete obedience to your Highness' commands I have to report as follows:

This Province of Guaiana is the most easterly part of the King's Dominions in South America on the north coast, and its boundaries are: On the north, the Lower Orinoco, the southern boundary of the Provinces of Cumana and Caracas; *on the east, the Atlantic Ocean; on the south the great river of the Amazons;* and on the west the Rio Negro, the Canon of

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the Casiquiari, and the Upper Orinoco, boundary of the eastern and unexplored part of the Kingdom of Santa Fé.

On the confines or limits of the vast region of this Province [of Guiana] the French and Dutch have occupied the whole sea-coast with their Colonies—the French in Cayenne, round the mouth of the Amazon, and the Dutch *in Surinam, Berbiz and Essequibo, fifty-five or sixty leagues from the Great Mouth of the Orinoco.*"

This document is published in Volume IV of the Appendix to the British Case, under No. 518, paragraph 3.

In another report of the same Centurion, also printed therein under No. 483, he says to his Government: that the Dutch did not have in the Cuyuni any possessions except a settlement [plantaje] at the place where it empties into the Essequibo; that having wished to establish, fifteen or twenty leagues further up in 1747, a post and guard for the purpose of enslaving Indians in Spanish territory by means of the Caribs, as soon as the missionaries were assured thereof, they informed the Commandant of Guiana, and he dislodged them from there the following year, 1758, by a detachment of soldiers, and burned the post and carried away prisoners the two Dutchmen, the negro and Caribs which they found, with the instructions and original documents, which showed the infamous commerce which, by order of the Director of Essequibo, and for his vile interest, that guard as well as all the other advanced posts of the Colony, bled the Spaniards to the heart or center of the province of Guiana.

Centurion also adds the following:

"It is also shown in document No. 1, that the Dutch are not in possession of the Masaruni, nor of the other rivers that flow into the Essequibo on the south-west side. And it would be well to undeceive them of this error, from which their unfounded complaints arise. For, as the Essequibo runs nearly parallel to the sea-coast, from the vicinity of the Corentyne to where it flows out into the sea, forty-five leagues to the east of the mouth of the Orinoco, all the rivers which take their rise in the center of our Province of Guayana and flow toward the coast extending between the mouths of the Corentyne and Essequibo, actually meet the Essequibo, which crosses and absorbs them.

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So that if, as the Dutch suppose, the territory which is comprised by the rivers flowing into the Essequibo, and which are the Cuyuni, Maseruni, Mao, Apanoni, Patara, and other smaller ones, with their arms and streams, were territory of the Republic, the foreigners would have a greater part of the Province of Guayana than the King our Sovereign, as is shown on the enclosed map, which with all possible exactitude, I have drawn for this report, indicating thereon, by a yellow line, what, in my opinion, the Dutch may claim in virtue of any right of possession acquired [*in any manner*] up to the present day."

Noting in passing that the English translation omits the three underlined words "*in any manner*," attention is called to the fact that Centurion gave positive assurance that the Dutch were not in possession of the Mazeruni, nor of the Cuyuni, nor of the Mao, nor of the Apanoni, nor of the Patara, as was likewise affirmed by the witnesses called upon to testify as to the cause of the Dutch complaint.

Now, it is not true that the Moroco line was the extreme Spanish pretension, as was alleged in the British Case. This is quite the contrary of the truth, as is shown by the fact that, after 1770, the date of Centurion's map, came the Treaty of Extradition of 1792, which placed the Dutch in the Essequibo, Demerari, Berbice and Surinam; and by the Royal Order of October 1, 1780, approving the plan of Inciarte to build two forts to protect from the Essequibo Dutch, the town which was to be founded near the said river. Previously, in 1737 and 1743, the Marquis de Terranova [Torrenueva] had recommended the settlement of a province which should prevent the Dutch from passing to the westward of the Essequibo river, and the construction of a fort at its mouth, which should serve as a protection to the town to be founded as the capital of that new province (Volume II of the Appendix of of the British Case, No. 225). It is likewise opposed to what, according to Professor Burr, the Governor of Guiana claimed in 1769, assuring the Counsellor of the Dutch Colonies that the boundary was in the Oene, its affluent on the left. Thus says Mr. Buissan, Counsellor in Essequibo, to the Director-General

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of Essequibo, on December third of that year, writing in these words:

"I cannot neglect to communicate to your Excellency that Pedro Sanchos has come from Orinoco with the bad news that in a month or six weeks two boats will come with as many as fifty or sixty men as far as in Pomeroon to carry off the Indians, and then, I fear, plantations will surely be pillaged; *for this Governor sets his boundaries as far as the banks of Oene, where James Fenning lives.* I do not doubt but many black and red slaves will go over to them; and who will get them back from them? * * *

I once told your Excellency that the Spaniards claim Pomeroon; the end of this will shortly be seen. * * *

Pedro Sanchos will, before this reaches you, already have made the communication to your Excellency." [Extracts from Dutch Archives, Document No. 281.]

In the same Volume, Document No. 172, page 333, it is seen that the Spaniards were trading with the Colonists inhabiting the Upper Essequibo.

Finally, in the report of Professor Burr upon the Dutch claims in Guiana, it is seen on page 368 that in the dispute between the Zeeland Chamber and that of Amsterdam in 1750, the latter denied that:

"colony of 'Essequibo and appurtenant rivers' included of right anything more than the Essequibo and its tributaries, and did not fail to point out that the various utterances of the Zeeland Chamber itself were inconsistent with each other in their statement of the boundaries."

In the second place, the British Case says, with regard to the point referred to, that Centurion reduced the Dutch Colonies to a strip of coast, and *separated from the whole Hinterland.*

The Spanish Governor delineated, as is said, the part which the Dutch occupied in fact, and no more; because, as the Commandant General of Venezuela explained in his instructions issued on February 4, 1779, to the officer, Don Jose Felipe de Inciarte, to found towns in the Province of Guiana:

"The said Dutch Colony of Essequibo, and the others which the States-General possess on that coast, are all in general on the banks of the

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rivers, close to the sea-shore, and do not penetrate far into the interior of the country."

Lord Salisbury wrote, on the 18th of May, 1896, as follows:

"All the great nations in both hemispheres claim, and are prepared to defend, their right to vast tracts of territory which they have in no sense occupied, and often have not fully explored. The modern doctrine of 'Hinterland,' with its inevitable contradictions, indicates the unformed and unstable condition of international law as applied to territorial claims resting on constructive occupation or control."

Mr. Olney replied to this on the 22d of June, and after repeating it in extra[illegible] said:

"But it cannot be irrelevant to remark that 'spheres of influence' and the theory or practice of the 'Hinterland' idea are things unknown to international law, and do not as yet rest upon any recognized principles of either international or municipal law. They are new departures which certain great European powers have found necessary and convenient in the course of their division among themselves of great tracts of the continent of Africa, and which find their sanction solely in their reciprocal stipulations. 'Such agreements,' declares a modern English writer on international law, 'remove the causes of present disputes; but if they are to stand the tests of time, by what right will they stand? We hear much of a certain "Hinterland" doctrine. The accepted rule as to the area of territory affected by an act of occupation in a land of large extent has been that the crest of the water-shed is the presumptive interior limit, while the flank boundaries are the limits of the land watered by the rivers debouching at the point of coast occupied. The extent of territory claimed in respect of an occupation on the coast has hitherto borne some reasonable ratio to the character of the occupation. But where is the limit to the "Hinterland" doctrine? Either these international arrangements can avail as between the parties only, and constitute no bar against the action of any intruding stranger, or might indeed is right.' Without adopting this criticism, and whether the 'spheres of influence' and the 'Hinterland' doctrines be or be not intrinsically sound and just, *there can be no pretense that they apply to the American continents or to any boundary disputes that now exist there or may hereafter arise.*"

With regard to Hinterland, it has already been observed that, according to the Publicist, Francis Despagnet, the excuse of the preceding consists in fixing, by means of an international agree-

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ment, a topographical line, within which each country has the right to occupy or establish a protectorate to the exclusion of the other contracting state ; this is its Hinterland or territory within the conventional line. In turn, each contracting country obligates itself not to make any attempt to acquire territory nor to dispute the influence of the other state beyond the line fixed. In practice, *Hinterland* is the prolongation toward the interior of a territory first occupied on the coasts, to the limit of the possessions of the other contracting state, or of the Hinterland, which may be recognized in the treaty. Despagnet cites what the German Chancellor said on the 30th December, 1886, to wit: "It does not treat so much of fixing the frontiers in conformity with the state of actual possession, as it is the coming to an understanding as to the spheres of reciprocal interest in the future," and adds, on his part, that there is much analogy between the actual system of *Hinterland*, and the *a priori* limits of the spheres of influence established in the fifteenth and sixteenth centuries between the colonizing nations by the Holy See; that the famous Bull of Alexander VI, of March 4, 1493, is only the limitation of a vast Hinterland divided among the Spaniards and the Portuguese; and, when these two nations, poorly satisfied with the papal decision, modified the frontiers drawn by the pontifical sovereign, by the Treaty of Tordesillas, of June 3, 1494, they entered into a convention that does not differ from modern treaties regulating the *Hinterland*, except as to the extent of its application and the spirit of submission toward the Pope, to whom they were subordinate, because Julius II. had to approve it in 1509; that the same *Hinterland* system appears organized in various recent treaties, those made between France and England in 1843, regarding the islands of the Hebrides, and the Leeward Islands of Tahiti; and with respect to Africa, by those concluded between England and Germany in Eastern Africa and in Zanzibar in 1886 and in 1890, etc., etc. That explanation makes clear that the so-called *Hinderland* doctrine of sphere of influence is a new inven-

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tion of the great powers which are dividing, according to their fancy, the territories of Africa, considered as barbarous and susceptible of acquisition by the first occupant. Consequently it has not, nor can it have any application except between the contracting nations; and Venezuela not being one of them, and Spain, from whom she derives her territorial rights, also never having been one, it is not conceived why the British Case invokes it against the Republic. If it is true that the Bull of 1493 was nothing but the limitation of a vast *Hinterland* between the Spaniards and the Portuguese; and if the Treaty of Tordesillas, by which they substituted the line of papal demarcation, does not differ from modern treaties of *Hinterland*, except in the extent of its application, and the spirit of submission to the Supreme Pontiff, who approved it in 1509, then the British have less reason to allege it, because it was only issued by the one who then held the necessary authority to do so, in favor of Spain and of Portugal, and to the exclusion thereby of all the other states. It has already been shown that in that epoch all Christian Princes recognized the validity of those Bulls, and to one of them the English owed the acquisition of Ireland. At all events, as Spain was the first occupant of Guiana, the doctrine of *Hinterland* could benefit her alone.

Until now the civilized world has never thought the native inhabitants, either of the old or the new hemisphere, to have sufficient capacity to constitute States, nor to obtain the rights of such. Their wishes have never been taken into any account whatever, and when, as in Africa, effect has sought to have been given to treaties concluded with them, such have been held, and not without reason, to be merely farcical.

As Salamon says, the celebration of a treaty cannot be conceived of, because it cannot be seen with whom it can be made and what could be its object. The cession of sovereign rights by those who do not possess any, cannot be comprehended. The acquisition of sovereignty will follow as a consequence of the

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occupation, and not of the treaty. The same when there exists in the territory a species of rudimentary sovereignty. In order to obviate the incongruity of these cessions, there has been conceived the idea of inserting a clause stating that "the Sultan cedes all the rights which constitute the notion of sovereignty, as is understood in the public law of Germany." It also happens many times that the petty king cedes his rights successively to various states as a means of increasing his income in the shape of brandy, powder and other products which please him.

By such means, and with presents of canes with silver heads, laces, three-cornered hats and coats, and military insignia, the English have obtained whatever they desired from the Indians. What value can their affidavits have? Likewise of what value are those of British officers, such as McTurk and im Thurm, who are themselves both parties and witnesses?

Caracas, May 10, 1898.

(Signed) RAFAEL SEIJAS.

COMMENTS AND CRITICISMS ON THE COUNTER-CASES OF VENEZUELA AND GREAT BRITAIN.

[*Translation.*]

Mr. Minister: You had the goodness to communicate to me the letter which the counsel of Venezuela in the boundary question between that country and British Guiana, addressed on the 6th of August last to Señor José Andrade, Envoy Extraordinary and Minister Plenipotentiary of the Republic, at Washington.

That paper speaks favorably of several of the notes which I have written with regard to the same case in the character of Counsellor to the Ministry of Foreign Affairs, and pursuant to

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your orders, and in the light of the official documents submitted for my examination. One of my notes was upon the Papal Bulls, which divided a large part of the world between the Spanish and Portuguese, and the argument has found place in the Counter Case of Venezuela, which also mentions that derived from the Spanish-English Treaty of 1670, in which the British monarchy recognized the dominion of Spain over the whole of America and its islands. Among the documents included in Volume II of the Appendix to the Counter Case there appear certain observations which I made, upon errors in the British Case, as to certain political information regarding Venezuela, New Grenada and Ecuador, and as to the supposed decree of Bolivar relating to the boundaries of Guiana.

I beg that you will express my sincere satisfaction to see that my modest efforts in the hope of attaining this object may contribute something to the defense of Venezuela.

Filled with that hope I have read once more the Counter Cases of Venezuela and Great Britain, and propose to here set forth some of the reflections which the study thereof has suggested.

It seems to me that Great Britain does not withdraw any of her claims in spite of the Case having demonstrated their exorbitance and injustice, and insists upon the enlarged Schomburgk line with a tenacity worthy of a better cause.

The British tell us that the failure of Dutch occupation in certain places does not make them Spanish or Venezuelan in default of proof that Spain or Venezuela had a right to them by occupation. The principles of contiguity and territorial unity, which are certainly of much weight, have been alleged in vain. But it has been deemed well to reinforce them, and for no other purpose was there invoked the Papal Bulls, the declaration of the King of Spain made in the Laws of the Recopilacion de Indias, and the treaties of 1670 and thereafter, in which Great Britain asked and received from Spain a renunciation and cession of the American territories which had been taken possession of by the Kings and subjects

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of Great Britain, only because she did not have them in her material possession. Admitting, then, the value of the Papal Bull of 1493, which no one could understand more perfectly than Spain and Portugal, it results that the part of Guayana adjudged to Spain rightly belonged to her, whether it was occupied or not, whether inhabited or deserted, whether in the interior or on the coast, or whether possessed in peace or perturbed by the intrusion of contrabandists or filibusters; and this even setting aside the title of contiguity, which would at once suffice.

But we cannot shut our eyes to the value of Article 7 of the Treaty of Madrid of July 16, 1670, renewed in 1713, 1763 and 1783, in which it was agreed that "The Most Serene King of Great Britain, His heirs and successors, *shall have, hold, keep and enjoy forever, with plenary right of sovereignty, dominion, possession and property, all those lands, regions, islands, colonies and places whatsoever, being or situated in the West Indies, or in any part of America, which the said King of Great Britain, and His subjects, do at present hold and possess, so as that in regard thereof, or upon any colour or pretence whatsoever, nothing more may, or ought to, be urged, nor any question or controversy be ever moved concerning the same hereafter.*"

From the observations with regard to Article 7, made by the compilers of treaties, Don José Antonio de Abren y Bertodano, and Cantillo, it is seen that the Crown of Spain thereby assured to the British King the dominion of all territories that he at that time possessed in America; that not having specified the territory ceded in this manner, the article thereafter came to be the cause of innumerable disagreements between the two monarchies.

But the argument derived from the treaty cannot be answered, and it is well thus to amplify it in every way, because together with that of the ousting of the Dutch who in 1758 were in the Cuyuni Post, and that of those who were in Barima in 1769, and likewise the various raids made into the Moruca and the

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Pomeroon, and the capturing of foreign ships in the Orinoco, are among the most powerful arguments which we have to use in this contest.

If, as Great Britain here claims, Spain did not possess in Guiana more than the Orinoco, and if, in the rest of America, her rights extended only to what was discovered and occupied by her, then why did the British King request of her the confirmation to him, his heirs and successors in plenary sovereignty and possession, all the lands, provinces, islands, colonies and dominions in the West Indies or any other part of America, which the King of Great Britain and his subjects possessed in 1670, so that they neither could nor should ever pretend any other thing, nor thereafter move any controversy whatever regarding it?

It seems to me that this was equivalent to the recognition of the grants made by the Papal Bulls to the Kings of Spain, and agrees with the value attributed to them by the British Crown, and which is referred to in the book of Mr. Harrisse.

I understand that the same recognition was given to them by France in the Florida case, cited elsewhere upon the authority of the diplomat, publicist and historian, Bancroft; and the Dutch themselves, in the act of accepting from Spain by the Treaty of Münster, the possession and enjoyment of the lordships, towns, castles, fortresses, commerce and countries of the *West Indies*, as also in Brazil, and on the coasts of Asia, Africa and *America* respectively, that the States-General of the United Provinces held and possessed, including especially the forts and places which the Portuguese had taken from those States and occupied since the year 1641; as also the forts and places which the said States should come to conquer and possess thereafter without infraction of said treaty.

Since 1580 the Dutch, then subjects of Spain, had rebelled against her to throw off the yoke and convert themselves into a sovereign and independent nation. Upon obtaining this end, in 1648, as a termination of the war carried on for this purpose,

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their former sovereign agreed to leave in their power, or cede to them, which is the same thing, the conquests made by them during the struggle; the one case outside of that of total conquest in in which belligerent acquisition takes effect in modern times. This being so, and no one being able to convey anything but his own property, and not that of others, it is clear that the Dutch occupations in Guiana, which were the subject of the cession contained in the treaty, had been effected in the territory of Spain, who could thus renounce them in favor of the new nation which was taking its place among the powers of the world.

Regarding the conquests made by the Dutch in Brazil, a part of America, and as such belonging likewise to Spain, she agreed to restore them to the Dutch, thus annulling the action of the Portuguese, also her subjects since 1580, but who had made themselves odious by reason of their also aspiring to independence. These Portuguese had formed expeditions to Brazil with the object of conquering and appropriating it, as in the end they succeeded in doing. What the treaty says with regard to those places which the Dutch might come to conquer and possess from 1648 onwards undoubtedly referred to the same territory of Brazil which the Portuguese were already disputing with them, and was done as an act of hostility against the Portuguese, being nothing more nor less than the said restoration of the conquests made by them from the Dutch in the same Brazilian country. If Spain had not thought it hers, and the Portuguese subjects of her Crown, she could not well have done one or the other thing without offending them, and whoever was the owner of the territory. There does not exist any other explanation for such an agreement.

To agree, as stated in Blue Book, No. 1, page 7, "*that the Treaty* [*of Munster*] *confirmed the Dutch in all the possessions which they had at that time acquired in South America, and gave them liberty to make fresh acquisitions wherever the Spaniards were not already established;*" is in the first part of the proposi-

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tion an evident truth, but which proves that those possessions up to that time were Spanish; and as to the second, Spain appears also disposing of places in which she had not then settled, but which she nevertheless recognized as hers. It has been proven that this last grant did not refer to Guiana but to Brazil, and to no other kind of acquisitions than those proceeding from conquest; which, as has been said, was agreed in odium of the Portuguese, who were already in revolt.

Be that as it may, those affirmations of the British defense form the meshes of a net in which she entangles herself, because they involve precisely the confession of that which they deny. At each step this truth is apparent in the documents so far produced by Great Britain. They say that "between 1621 and 1648 the Dutch commanded the whole coast of Guiana as far as Trinidad"; that "in 1637 and 1638 they were found settled in the Amacuro"; that "during the whole of this period (prior to 1648) the Dutch were masters of the sea in the neighborhood of the mouth of the Orinoco"; that "they were always present at the west of the Moroco and controlled it"; that servants of the Dutch West India Company were *residing* in the Barima and the Pomeroon in the year 1683;" that "the Dutch before 1648 controlled the Cuyuni and Mazaruni basin," etc.

Place these propositions beside those before referred to, viz.: "that the Treaty [of Munster] confirmed the Dutch in all the possessions which they had at that time acquired in South America, and gave them liberty to make fresh acquisitions wherever the Spaniards were not already established;" and without losing sight of the fact that in that treaty only Spain and the Low Countries were parties, it is necessary to agree that the confirmation of such possessions as were acquired by them in South America presumes to be in Spain, to whom it was due, the right to do so, or, what is the same thing, that South America belonged to Spain, and she could dispose of the same as she saw fit in the

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employment of the powers inherent in international domain or State sovereignty.

In no other manner is it conceived that Spain could have conceded to the Dutch, and even *ex post facto*, territories in South America, any more than that they could accept them. If Spain were not the owner of those territories, and they were open to the occupation of all the powers, as strenuously claimed by the Dutch when once they were recognized as a sovereign nation, there would not have been the least necessity for Spain to confirm to them these intrinsically legitimate acquisitions. The agreement in the Treaty of Munster between Spain and Holland is an irrefutable argument that the Dutch recognized in Spain the power to grant them rights in Guiana.

It is absurd to say that the part relating to the future conquests by the Dutch referred to Spanish places, because Spain considered all that region hers, and indispensable to the security and unity of the Province of Venezuela and of the Vice Kingdom of New Grenada, as the Governors of that Province so many times made manifest. To authorize a nation to make conquests in a country's own territory is to invite that it be done by a future war in which it previously declares itself conquered, a thing so contrary to the duties of a nation to preserve and defend itself, and seek its own prosperity, that it finds no example in diplomatic history.

Among the documents of the Washington Commission there is found a report of Prof. George L. Burr, upon the meaning of Article V and VI of the Treaty of Munster, and which concludes with these words:

1. "It is improbable that, in the intent of its framers and its ratifiers, the Treaty of Munster conceded to the Dutch a right to win from the natives lands claimed by Spain.

2. It does not appear that it was ever interpreted in this sense by either Spain or the Dutch."

From the reasoning of this report it results that the value of the grant was limited to the conquests which in the future the

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Dutch should make in Brazil; and this precisely because Spain considered it hers by reason of the discovery and occupation effected there by Spaniards and Portuguese, the latter then being subjects of the Spanish Crown, but who, being then in rebellion, were seeking the recovery of their independence. Spain, in order to diminish the number of her enemies, decided in 1648 to agree to the independence of Holland, and, as a means of flattering her, not only did she agree to the restoration of the conquests made upon Holland by the Portuguese in Brazil, but also, to prejudice the latter, she extended her favors to the Dutch to the point of giving them the privilege of making conquests there likewise. Probably Spain feared the loss of Brazil, as she did lose it, in fact, and moreover, part of the same Guiana which went to form the so-called Portuguese, now Brazilian, Guiana. That is, that following the example of the Low Countries, Portugal also happily succeeded in her purpose to free herself from the Spanish dominion. Thus was Spain vanquished in America by the Portuguese, and forced to divide with them her southern dominions, as was realized by the treaties of 1750 and 1777. For the same reason the clauses of the Treaty of Munster concerning the restoration of the conquests which had passed into the hands of the Portuguese in Brazil availed nothing to the Dutch, no more than the recognition of the future conquests which might take place by the Dutch in the same territory. They preserved nothing of what they had occupied in Brazil, all of which came under the Portuguese power, as a result of their definitive victories. In South America Holland retained only the portion of Guiana that the Treaty of Munster gave her, and also the colony of Surinam obtained from Great Britain by the Treaty of Breda in exchange for the colony which they had acquired under the name of New Netherlands in North America, and which came to be in the course of time the present State of New York in the Federation of the United States of America. Only tho settlements of Demerara, Essequibo and Berbice having been ceded to Great Britain in

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1814, Surinam is to-day still a Dutch possession, bordering on British Guiana and on French and Brazilian Guiana. The boundary between Surinam and British Guiana is now pending; and that of the latter with France was fixed in 1891 by the Emperor of Russia, who was named arbitrator for that purpose.

Before entering upon other points it seems proper to take note of the introduction to the British Counter-Case, which contains these significant observations:

"In presenting to the Arbitral Tribunal the Counter-Case on behalf of Great Britain, Her Majesty's Government desire to call attention to the fact that the Venezuelan Case contains a number of references, particularly in the notes, to the Report of the United States' Commission, and to the Report of Professor Burr presented to that Commission.

It must be borne in mind that the statements contained in those Reports, and the inferences founded thereon are not in any way binding upon the Governments of Great Britain or Venezuela, and must be tested by the evidence by which they are supported.

Moreover, since those reports were prepared, a large number of documents bearing on the case, and a great body of evidence have been collected. These documents and this evidence were not before the United States' Commission.

Her Majesty's Government have therefore abstained in this Counter-Case from discussing the passages cited from the Report of the United States' Commission and of Professor Burr, and have confined themselves to commenting upon the statements made in the Venezuelan Case and the evidence referred to in that Case or contained in the Appendix to it."

The Commission spoken of was appointed by the United States to study the question of the divisional line between Venezuela and British Guiana, and to make a report upon the same to the Washington Cabinet, all in a private character and for the purpose of furnishing it a basis upon which to proceed. It is well known that it did not reach the end of its labors, because the cessation thereof having been directed before they were concluded, it had to prematurely disband. The report of its work, which it presented on that occasion, set forth, as it was bound to do, what steps it had taken for the fulfillment of the duty for the perform-

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ance of which it had been appointed. One of its acts consisted of the sending to Europe of Professor Burr, for the purpose of studying the Dutch and British archives, which was duly carried out, so that certain copies of the documents examined, 350 in number, form a second volume of the nine in which appear together the studies carried on by direction of the Commission, and also the papers transmitted to it by the Governments of Venezuela and Great Britain. When the fact of the organization of the Commission was communicated to the latter Government, and its desire made known that the interested parties should aid it by sending it all documentary evidence, historical narrations and unpublished archives which might be found in its possession, it replied in a note of February 10, 1896, through its Minister of Foreign Affairs, that it would gladly place at the disposal of the Government of the United States all data which it had relating to the boundaries with Venezuela; that it was occupied in gathering documents to be presented to Parliament, and that it would take great pleasure in sending advance copies of them.

Subsequently the British Government submitted to the Washington Commission information referring to the claims of Great Britain as to the Barima boundary, including an opinion of her Attorney-General in that particular; and announced that it would publish, in Blue Book No. 3, documents illustrating said matter; which was the result of a request by that body.

When Professor Burr went to London no difficulties were put in the way of his examination of the portion of the Dutch archives which exist there, with regard to the colonies of Essequibo, Demerara and Berbice, which were ceded to the British in 1814.

By such antecedents, and especially by the sending to the Washington Commission of Blue Books 1, 2, 3, 4 and 5, concerning the controversy, and which that Commission reproduced as volumes V and VI of its publications, which were sent to the Governments of Venezuela and Great Britain, it is perceived that

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both were pleased to comply with the solicitation that they lend their aid to the Commissioners in the clearing up of the dispute. It is understood that the work of the Commission will now, with the same object in view, be passed on to the five arbitrators who have been appointed.

Their study will be facilitated not a little in view of that already undertaken by such competent persons as the five appointed to form the Commission, who were among the most illustrious of the great Republic, namely: Hon. David J. Brewer; Hon. R. H. Alvey; Hon. F. R. Coudert; Hon. Daniel C. Gilman, and Hon. Andrew D. White. The first of these, who presided over it, is an Associate Justice of the Supreme Court of the United States, and also a member of the Tribunal of Arbitration, created to decide the controversy, was appointed by the choice which that Tribunal made with the due authorization of Venezuela, and in her name.

Its Secretary was Mr. Mallet-Prevost, whose ability, judicial and linguistic knowledge, assiduity and experience, the Commission made the subject of the fullest encomiums in its general report. He also contributed to the work in the shape of a very meritorious report upon the cartographical testimony of geographers, succeeding in arranging the maps in classes or groups showing the historical connection between them and pointing out their value as evidence.

Dr. Justin Winsor, Professor Franklin Jameson, Professor George L. Burr, Professor J. C. Hanson and Dr. de Haan, who participated in the work of the Commission, belong,—the first to the Library of Harvard University, with the reputation of being one of the most eminent geographers of the country; the second and third are professors of history, one in Brown University and the other in Cornell; the fourth is cartographer of the State University of Wisconsin; and the fifth from the University of Johns Hopkins, an expert in the Dutch language and in the examination of archives. A great number of private citizens acting *motu*

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proprio furnished the Commission with books, maps, pamphlets and documents of various kinds, which seemed to them capable of contributing to the desired end; and the public offices immediately opened their treasures to them, among others the Library of Congress. The Commission was likewise given valuable assistance by the U. S. Geological Survey and the Hydrographic Bureau, whose officers readily placed at its disposal all the materials which they had in their possession, and aided them by their personal assistance, notably Mr. Marcus Baker. This last for the period of several months devoted himself to work upon maps and charts which have been published in a reproduction of the most important ones of the last three centuries. Not satisfied with this, the Commission occupied itself with profound historical investigations, and the perusal of books of travel, in search of light upon the Spanish and Dutch settlements in Guiana, and upon questions of occupation and territorial dominion.

The Commission also reviewed all of the diplomatic correspondence carried on between officers of both countries, as well as of the Colonial Governments prepared for the Home Governments, with narrations of events and reports of conferences. Outside the printed diplomatic correspondence, the Department of State gave it access to all of that contained in its bound volumes, from which they caused to be copied whatever seemed to them to relate directly or indirectly to the question at issue.

It will be seen that the Commission had to examine many treaties, beginning with that of Munster of 1648, and that this brought it to the discussion of the various works upon international law from Vattel down to the present day, in so far as they related to the matter in question; and the discussion of the same nature between the United States and Spain as to the boundaries of Florida (now Louisiana and Texas); and between the United States and Great Britain regarding the boundaries between their North American possessions and the British Colony.

When we add to these investigations that also which is neces-

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sary to make one familiar with the numerous documents, maps and papers submitted to the Commission for examination by Venezeula and Great Britain, it may be asked whether it is well to put to one side the work of a Commission of gentlemen to whose wisdom, and to the great number of materials with which they had to work, they united the character of third parties, wholly disinterested and impartial, and bent only upon giving their best services to the cause of peace and harmony between two nations, and upon meriting the confidence placed in them by their Government and the world.

That such a view was held of them by the Governments of Venezuela and Great Britain may be seen from these words taken from its report:

"We take pleasure in adding that during the entire life of the Commission each of the two Governments has manifested in a most agreeable and satisfactory manner its desire to help us in our investigations. Every call made upon either has been promptly answered, and there has been an effort to put us in possession of all the facts which either deemed of importance to a satisfactory solution of the question in dispute."

It does not seem inopportune to call to mind that in the British Blue Books as well as in the Case and Counter-Case of Great Britain, there are adduced many Dutch documents in support of their claims; but nevertheless they declare in their Second Volume that they will not discuss the reports of the Washington Commission, several of which are based upon extracts from the archives of the Hague, examined most diligently and transcribed with a marvelous industry.

Returning to the original theme, I insist upon the following reflection already made elsewhere:

"The following feature of the British Case attracts still more attention. Its principal argument, if not the only one, consists in ignoring the force of the rights of Spain as the discoverer and first occupant of America in general, and in particular of the region of Guayana, upon which is based the question at issue, in order to attribute validity solely to Dutch and British occupation. Nevertheless, the documents presented, taken from the archives

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of Spain, tend only to prove that the Spanish authorities knew and tolerated, or at least did not succeed in preventing, foreign occupations.

"Thus Great Britain destroys, by such a course of argument, the foundations upon which she has built her claims. Because, in truth, if the territory of Guayana, taken by the Dutch, was justly open to occupation, it is useless to seek from Spanish authority confirmation of the right to such acquisitions; still less, if it is true, as it is affirmed with admirable assurance on page 36 of the Preliminary Statement, 'that the more accurate statement of events is that attacks and encroachments by Spain on the Dutch possessions were repelled by the Dutch and British.'"

In another place, following the same reasoning, it is said:

"If at the date of the treaty, Spain had only one settlement in Guayana, namely, St. Thomé, and therefore the Dutch, or any others were at liberty to occupy and take possession of all the rest of the territory, what necessity was there for Spain *to confirm* the Dutch in all their possessions which they had at that time acquired therein, as if she had formerly had any rights over them, and as though such occupations were not legitimate without *her confirmation*, an act which would signify on the part of Spain a cession of her property in favor of the new owners? And what value could be attached to the license which the treaty is claimed to have given the Dutch, in order to make fresh acquisitions wherever the Spaniards were not already established? How can a nation give away what is not its own, and what is accessible to occupation by every one without power on its part to prevent it?

"On the contrary, upon examination of the Treaty of Munster, by which was terminated the long war of more than seventy years between Spain and the Netherlands, which were in revolt against her, and by which these were recognized as a sovereign and independent power, every impartial reader will find what is found in all treaties of peace, namely, a final settlement of the conquests made by the belligerents during the time of hostilities. In other words, in that treaty the Dutch acknowledged that they had no perfect title to the possessions which they had acquired in Guayana during the war, and asked Spain to validate, by treaty and cession, their right to these acquisitions."

In support of this it was thought well to cite the opinion of Phillimore, Sec. CCCCVI, vol. 3:

"*With respect to immovable property captured in war*, the established doctrine of International Law may now be said to be *that the*

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acquisition of it is not holden to be completed before either the territory in which it is situated has by submission and consequent extinction of its international personality, become incorporated in the possessions of the conqueror; *or what is a much safer title to property so acquired, before a Treaty of Peace has recognized and ratified the possession of the conqueror.*"

Sec. 526 : "*It is now pretty generally acknowledged that there is both absurdity and iniquity in classing territory obtained by conquest under the category of res nullius, and in applying with unreasoning pedantry or sophistical injustice, not the spirit, but the letter, of the Roman law, to a subject-matter which, like that of conquest, has necessarily undergone, in all its bearings, a most important change since the time of Justinian.*"

"The shameless pretext of Frederick the Second for the invasion of *Saxony*, in 1756, will not be alleged again by the most reckless despiser of International Justice."

"Various and many Treaties of Peace fortify the sound international doctrine that *conquest* and *occupation* of territory are distinct public acts, carrying with them very different consequences both to the State and to the individual. The language of treaties which concern the acquisition of conquered territory is that the subdued State *yields or concedes* a certain territory to another; not that the conquering State *retains or keeps* possession of what it has seized, which would be the proper expression in the treaty with respect to a State obtaining the recognition of an *occupied* territory."

"'It is unquestionable,' says Monsieur de Rayneval, 'that the word "cede" (céder) necessarily implies ownership, consequently it is neither destroyed by war nor by conquest. Thus the principle taught by the Roman law, and the majority of publicists, is belied in practice.'"

From this it has been deduced that it is not true, as stated in Blue Book No. 1, in several places, and especially on page 25, that Great Britain "extended her settlements and continually exercised over the territory originally claimed by the Dutch all those rights by which nations usually indicate their claim to territorial possession."

In the Counter Case of Venezuela it is shown beyond a doubt that the Treaty of Munster ceded to the Dutch that which they possessed in 1648, not any subsequent extension at the cost of

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Spain; that, on the contrary, it was there stipulated that the Dutch should respect the Spanish possessions, and should not acquire more Spanish territory; and that if the said extensions be at the west of the Essequibo, precisely the region in question, they prove a violation of treaty obligations.

This is a capital point. It was thought to be decided by Article III of the Treaty of Arbitration, which reads:

"The Tribunal shall investigate and ascertain the extent of the territories belonging to, or that might lawfully be claimed by the United Netherlands or by the kingdom of Spain respectively at the time of the acquisition by Great Britain of the Colony of British Guiana, and shall determine the boundary line between the Colony of British Guiana and the United States of Venezuela."

But the British Counter Case asserts that the Dutch, at the date of the Treaty of Munster, were unquestionably in possession of the great part of the coast, from the Orinoco to the Amazon; that they controlled all the rivers which run into the Atlantic, except the Orinoco, and had established settlements at various points; that those of the Essequibo and Pomeroon were not an infraction of the Treaty of Munster, but were expressly in accord with the rights reserved to the Dutch by Article V thereof; that British occupations of the territory situated between the Essequibo and the Pomeroon, which always extended and now extend far beyond that territory, were founded as of right in succession to the Dutch by virtue of the right which they and Great Britain independently had to colonize and settle.

In a paper prepared here in 1897 several pages were devoted to the explanation of the interpretation which Venezuela gave to Articles III and IV of the Treaty of Arbitration. Upon examining them, it was seen that the first does not authorize the Arbitrators to give to the British any rights other than those belonging to the Dutch at the time of the cession in 1814; neither may they take into consideration what England may have done from 1796 to 1802, nor from 1803 to 1814, because they must

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limit themselves, according to the treaty, to an investigation of the state in which things were found between the Spaniards and the Dutch in 1814; neither, for the same reason, may they consider the acquisitions which Great Britain pretends to have gained on this side of the Pomeroon, the limit of the area under Dutch cultivation in 1814; nor likewise the usurpations committed after 1850, being opposed to the agreement entered into between Venezuela and Great Britain neither to occupy nor usurp any part of the territory in dispute, and effected in spite of vigorous and repeated protests on the part of the Republic and in the abuse of force; and furthermore, that they must not give them the benefit of the lapse of fifty years set forth in the treaty as the term of prescription, etc.

If this were not so, the mention made in Article III of the necessity of inquiring into and ascertaining the extent of the territories belonging to Spain and the Netherlands in 1814, the date of the cession of the latter's colonies in Guiana to the English, would be without any value or effect as a means of arriving at a knowledge of the boundary between these territories at that time, and thereby determine the dividing line between Venezuela and Great Britain.

True it is, that to the phrase "territories belonging to the United Netherlands or . . . the Kingdom of Spain respectively," are added these words, "or that might be lawfully claimed," by one or the other, "at the time of the acquisition by Great Britain of the colony of British Guiana"; but upon analyzing the significance of such addition, it has been made clear what they were; not the territories which the Dutch might legitimately claim, because it has been proven beyond a doubt that they did not pass the Essequibo on the coast, but the others which they were bold enough to claim without documentary proof.

It is necessary, then, to submit said Article III to the crucial test of a right interpretation in order that, in harmony with the

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rest of the Treaty, it may be seen that its true sense is to carry back things to the state in which they were in 1814.

To the same effect is Article IV of the Treaty, which constitutes its essence. It is as follows:

"In deciding the matters submitted, the Arbitrators shall ascertain all facts which they deem necessary to a decision of the controversy, and shall be governed by the following Rules, which are agreed upon by the High Contracting Parties as Rules to be taken as applicable to the case, and by such principles of international law not inconsistent therewith as the Arbitrators shall determine to be applicable to the case:

Rules.

(*a.*) Adverse holding or prescription during a period of fifty years shall make a good title. The Arbitrators may deem exclusive political control of a district, as well as actual settlement thereof, sufficient to constitute adverse holding or to make title by prescription."

In the Venezuelan Case it is stated:

"Venezuela has accepted this rule, but she submits and will claim that *time* is but one of many elements essential to create title by prescription. Prescription to be effective against nations, as against individuals, must be *bona fide*, public, notorious, adverse, exclusive, peaceful, continuous, uncontested, and maintained under a claim of right. Rule (*a*) fixes fifty years as the period of prescription, but leaves its other elements unimpaired" (V. C., p. 229).

Upon such an observation the British Counter Case comments as follows:

"The proposition herein enunciated is not accurately stated. Time and possession are, broadly speaking, the only essential elements of prescription." (B. C.-C., p. 137.)

In the Counter Case of Venezuela this point has not been taken up, doubtless in the thought that Great Britain would not controvert it; but as she has now impugned it, though only by a mere denial, it is necessary to expound the proposition of our Case.

I attributed much importance to the said rule (*c*), considering that it simplified the question, and was equivalent to a recog-

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nition of the rights of Spain to the whole territory of Guiana; but in the attempt to destroy them by the employment of acquisitive prescription, the latter is called in the treaty "exclusive political control, and effective colonization" of a district. I therefore devoted myself to searching through the books that were accessible to me in Caracas, for the doctrines of science in that particular. I did not find a complete exposition of the matter, either in the books which were the most comprehensive up to that time, viz.: Calvo's "Theoretical and Practical International Law," in five volumes, to which the sixth was added in 1896; and the German Manual of International Law, with the coöperation of twelve publicists, almost all professors of science, published in Hamburg in 1887, by Dr. Franz von Hoftzendorff, also professor of law; and the most recent "Treatise on the Public International Law of Europe and America according to the progress of Science and the Practice of Modern Times," of which there have arrived here, up to to-day, seven volumes, there being lacking only the eighth and last.

I saw that in Ortolan (Eugène) alone, there was treated at large, in all its phases, the point that appeared in the treatise published in 1851 in Paris, "On the means of acquiring International Domain, or the property of a State among Nations, according to the Public Law of Nations, compared with the means of acquiring property among private persons according to municipal law; and followed by an examination of the principles of political equilibrium." I also found in a French periodical, "General Review of Public International Law," of Professors Antoine Pillet and Paul Fanchille, No. 3, of May and June, 1896, an article entitled "On Acquisitive Prescription in Public International Law," a paper which explains its object and the conditions necessary to its existence, by Eugène Audinet, Professor of International Law of the Law Faculty of Aix.

I gathered the principal ideas which these texts contain to

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establish the same principles as are invoked in the Case of Venezuela, not without making use, also, of the teaching of Grotius, Barberac, De Filice, Martens (Henri), Rutherford, Klüber, Ahrens, Heffter, Woolsey, Martens (F. de,), the fifth Arbitrator, Ribaud, Wild, Travers Twiss, Vattel, Phillimore, Calvo, Pradier-Fodèrè, Fiore, Riquelane, Bello, Madiedo, Torres Campos, Ortolan (Eugène), and Audinet.

There were also utilized to the same end, the statutes of several countries, as explained by their jurists and commentators, Marcadé, Troplong, Baudry, Lacatinere, Lariche, Bonjean, Bentham, Covarrubias y Molina, Escriche, Tapia, Stephen, Wharton, Giles Jacob, and T. E. Tomlin.

In fine, another chapter was dedicated to the task of demonstrating that prescription is not applicable to the present case, because it does not fulfill the requisites which are deemed indispensible in law to make it valid.

CARACAS, October 4, 1898.

(Signed) RAFAEL SEIJAS.

NOTES ON MARMION'S REPORT OF JULY 10, 1788 AND ON MAPS SUBMITTED BY GREAT BRITAIN.

[*Translation.*]

I. MARMION'S REPORT.

In the Appendix of the British Case, Volume V, page 52, there was published a "topographical and general description of the Province of Guiana and of its mighty river the Orinoco, in which an account is given of its settlement, arable lands, products and commerce, and certain measures are proposed which are regarded as conducive to its development and increase, its preservation,

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and better condition of defence," being a report written by the Governor of Guiana, Don Miguel Marmion, on July 10, 1788.

The second paragraph is as follows:

"The portion of this country (Guiana) belonging to Spain is bounded on the east by the Dutch Colonies of Essequibo, Demerari, Berbis, and Surinam, and by the French Colony of Cayenne; on the south by the Portuguese Colonies of the Amazons and Rio Negro; and on the west and north by the Upper and Lower Orinoco, which separates it from the Kingdom of Santa Fé and from the Provinces of Barinas, Carácas, and Cumaná. (It [Spanish Guiana] may be regarded as divided into three districts: that of the Lower Orinoco, which includes from Point Barima, on the great Boca de Navios, up to the Rapid of Atures, a space of more than 180 leagues from east to west, wherein lies the capital of Guayana Santo Thomé, the reductions of the Catalonian Capuchin Fathers, part of the Missions of the Observantines, and the best arable lands and chief, though very scanty, settlements and products of the province; that of Parime, on the south, in which are the so-called city of Guiroir and the Lake of Parime, or El Dorado, formerly so celebrated,* a country of great extent not well explored, and which the Rivers Parime, Mao, Curaricara, and Paragua water to no purpose; and, lastly, that of the Upper Orinoco, from the mouth of the River Meta, not far distant from the Rapid of Atures, up to San Carlos, at the junction of the Rio Negro and Casiquiare, and following the stream of the latter until it discharges itself again into the Orinoco near the Villa of Esmeralda.) A great part of this extensive province [Spanish Guiana] is occupied, especially towards the centre, by divers nations of barbaric Indians, who are but little known and very difficult to reduce, owing to their wandering life, to their sheltering themselves in the thickets of their woods and forests, and to their attachment to, and extreme love of, independence, which they prefer to all the greater advantages of civilized and rational life." [B. C. V. p. 52.]

On comparison of this passage with the corresponding one in the authenticated copies, which Venezuela has three times obtained from the archives in Spain, it is seen that in the same title of Marmion's report there is a difference of texts. That in the British Case lack certain words which are published in the Case

* Lake of Parime between the third and fourth degrees of north latitude, on the shores of which the discoverers of the 16th century used to place the imaginary great city of Manoa or El Dorado.

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of Venezuela, viz: "rivers bathing it and affording its communications;" the word "adaptable" before the words "arable lands;" likewise the words "its dense forests." In place of the words "which are regarded as conducive to its development and increase, its preservation and better condition of defense," our Case reads "some means best adapted and conducive to their investigations and advancement."

But that is not the most important difference. The principal one consists in there being inserted in the second paragraph already copied, the words put between parentheses, which read: "(It [Spanish Guiana] may be regarded as divided into three districts: *that of the Lower Orinoco, which includes from Point Barima, on the great Boca de Navios,*" etc., up to and including the words "until it discharges itself again into the Orinoco near the Villa of Esmeralda.")

The same thing was done in two places in Blue Book No. 3, pages 20 and 316, the first time the words being put in italics, from the beginning of the insertion, up to and including the words "part of the Missions of the Observantines."

It seems that the object was to prove that in the mind of Governor Marmion the Spanish Province of Guiana commenced at *Point Barima;* which was wholly incorrect, because the same paragraph begins by saying: "The portion of this country [Guiana] belonging to Spain is bounded on the east *by the Dutch Colonies of Essequibo, Demerari, Berbis, and Surinam, and by the French Colony of Cayenne.*"

Certainly he would have said this if the Spanish possessions did not reach beyond Barima. On the other hand, there are recorded acts of Marmion showing that he exercised jurisdiction over Barima, Waini and other points; for example, the commission given on June 20, 1785, to Mateo Beltran, Master of the Orinoco Coast Guardship, that he should enter Barima Creek and intercept two foreign ships which were there cutting timber. That commissioner was in the Amacuro, the mouth of the Barima, in

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the Mora, in the Waini, in the Arature, etc. In the same report above referred to, Marmion says that "The Essequibo falls into the sea 48 leagues to the windward of the Boca de Navios of the Orinoco," just as was written by Governor Centurion when he said (Blue Book No. 1, p. 124 and 125) in his report of November 11, 1773, that:

"On the confines or limits of the vast region of this province the French and Dutch have occupied the whole sea-coast with their Colonies—the French in Cayenne, round the mouth of the Amazon, *and the Dutch in Surinam, Berbiz and Esquibo, 55 or 60 leagues from the great mouth of the Orinoco.*"

The Dutch being at this distance from the great mouth of the Orinoco, the boundary between the Spanish Province of Guiana and the Dutch Colonies could not begin there.

The other point which appears in the documents cited is the mistake made in copying the following paragraph on page 63 of the Appendix of the British Case, Volume V:

"This first settlement having been formed with the views stated, and with the object which shall be given more fully when treating of the defence, the colonization shall be continued in the interior of that peninsula with three, four, or more villages, and lastly with a villa of Spaniards on the banks of the Cuyuni nearly at its point of union with the Supamo, which will be most conducive in the said spot to the furtherance of the progress of the settlement, and to the *protection of this approach to the Missions, and the prevention, as already mentioned, of the escape of the Indians and their communication with the Dutch of Essequibo, and the penetration of the Ittaer into their districts, and the prejudicial traffic in poitos.*"

At the foot there is a note referring to the expression, "a villa," as follows:

"From an extra-judicial report it is known that a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Orinoco (*sic*)."

It is manifest that this is completely absurd, because the Cuyuni does not anywhere run into the Orinoco, although one can communicate therewith by means of other rivers and streams,

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But by the photograph which has been procured and duly certified from a page of the original report existing in the General Archives of Simancas, Department of War, bundle 7,241, the error is clearly shown. [See V. C. C. Vol. 3, p. 146.]

What the note really says is this:

"From an extra-judicial report it is shown that a beginning has been made of the foundation of the new town nearly at the point of union of the Cuyuni with the Curumo." [V. C. Vol. 3, p. 400.]

The said interpolation and this substitution of *Orinoco* for *Curumo* raises a presumption that in the copies of other documents, Spanish as well as Dutch, similar errors may have been made.

The Counter-Case of Venezuela makes certain conclusive observations with regard to the last error, which is persistently committed, because it first appeared in the British Blue Book No. 3, page 322; and the note is adduced as a new proof of the existence of the fort on the Curumo, which at least had a beginning in 1793, but which is denied in British Blue Book No. V, in spite of the assertion of Schomburgk to the contrary. The latter in his memorandum upon the boundaries of Guiana addressed to Lord Stanley, Colonial Secretary, on December 26, 1844, says:

"I expect likewise that the Venezuelan Government will oppose the right bank of the River Cuyuni being taken as a boundary line from where that river receives the Acarabisi to its source, and from thence to Mount Roraima, in consequence of the Spaniards having had a fortified post, called Cadiva, opposite the mouth of the River Curumu." [B. B. No. V, p. 51.]

This assertion is rebutted in a note saying:

"This was a mistake. Subsequent investigations have shown that no such post was ever established by the Spaniards. See 'Venezuela No. 3 (1896), pp. 25–6."

The passage cited is as follows:

"In the present condition of things, and with those Colonies again in the hands of their ancient possessors (the Dutch), the danger is fortunately diminished, but not to such a degree as to render it unnecessary to provide

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for the security of that frontier (the importance of which is already better recognized) as well and speedily as possible.

"*And for this purpose it is, in my opinion, indispensable that, as proposed, a fortress, with a mixed village of Spaniards and native Indians, should be constructed on the banks of the Cuyuni; that the escort of from twenty-five to thirty men which, by Royal Order, have been granted to those Missions, and which can be formed of the settlers themselves, should be united therewith, and that every effort should be made to encourage and increase this establishment by inducing the people, through concessions of lands* and certain other favours, to settle in those parts; where as in the other approaches and chief entrances to the Orinoco (as already stated in another place), the measure of its strength and true resistance will be in proportion to the greater or less extent of its population." [B. B. No. II, pp. 25–26.]

After this citation it is confidently affirmed in Blue Book No. 3 that:

"The proposed post was, however, never erected, nor was there ever any Spanish guard placed there."

But what can rationally be deduced from the words of Marmion is that, at the date of this report, July 10, 1788, the fort on the Curumo had not yet been constructed. It was to have been commenced in that year; and that in that year a Spanish guard was placed there, appears incontestable from the documents published in Volume II of the Appendix to the Case of Venezuela, namely, certain communications from the Governor of Guiana, Luis Antonio Gil, in 1792, who speaks of the existence of the sentry box, or strong-house of the Cuyuni and the means adopted for its defense.

In 1793, Señor Miguel Marmion, substituted as he had been by Luis Antonio Gil, was in Caracas, from whence he says that he sent a copy of his report of 1788, made up from the rough notes and loose memoranda which happened to remain in his possession.

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II. MAPS SUBMITTED BY GREAT BRITAIN.

In Volume VII of the Appendix to the British Case, page 358, is cited the following:

"General Plan of the Province of Guiana, as accurate as possible and with respect to its wide circumference and unknown centre prepared with the information acquired up to December 31, 1870, by the Commandant General thereof, Don Manuel Centurion."

With regard to this map, there is to be found on page 359 the following statement:

"On this Map, drawn to illustrate Centurion's reports and recommendations, *the boundary is drawn in accordance with the extreme Spanish view,* viz., from the right bank of the Moruka, past the source of the Povaron (Pomeroon), crossing the Essequibo a few miles above its junction with the Massaruni, and then turning almost due east, so as to confine the Dutch Colonies to a strip of coast and cut off the whole *Hinterland.*

"The Mission Stations are marked, but not named, and are shown as lying between the head-waters of the Yuruari, the course of the Imataka, and the source of the Caroni River. St. Thomé is at Angostura, and there is no mark of Spanish occupation east of the Orinoco, save the Missions."

The most notable thing in this commentary is that it says that "the boundary is drawn in accordance with the extreme Spanish view." According to this, Spain could never have made claim to beyond the Moroco.

It will not be inopportune to remember what has been said by some authors with regard to maps. For example, Twiss said:

"Maps, however, are but pictorial representations of supposed territorial limits, *the evidence of which must be sought for elsewhere.*" [Oregon Question, p. 128.]

"Maps, as such, that is, when they have not had a special character attached to them by treaties, merely represent the *opinions of the geographers* who have constructed them, which opinions are frequentiy founded on fictions or erroneous statements." [*Idem.* p. 306.]

That Governor Centurion did not deem the boundaries marked on his map to be the true boundaries of Guiana, he himself de-

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clared in so many words in reports transmitted to his Government, some of which are reproduced in the Appendix to the British Case. Here is the proof. On Page 111 (of British Case, Appendix IV) in the report of the Commandant of Guiana to the King, dated November 11, 1773, three years after the sending of the said map, we find these words:

"In punctual and complete obedience to your Highness' commands I have to report as follows:—

"This province of Guaiana is the most easterly part of the King's dominions in South America on the north coast, and its boundaries are: On the north, the Lower Orinoco, the southern boundary of the Provinces of Cumaná and Carácas; *on the east, the Atlantic Ocean; on the south, the great river of the Amazons;* and on the west, the Rio Negro, the cañon of Casiquiari, and the Upper Orinoco, boundary of the eastern and unexplored part of the Kingdom of Santa Fé.

"*On the confines or limits of the vast region of this province the French and Dutch have occupied the whole sea-coast with their Colonies*—the French in Cayenne, round the mouth of the Amazon, *and the Dutch in Surinam, Berbiz, and Essequibo, 55 or 60 leagues from the Great Mouth of the Orinoco.*" [B. C. IV., p. 111.]

In Blue Books, Nos. 1 and 3, such reports are spoken of and the assurance offered that in the above map the Dutch were represented as being in possession of the coast to a point beyond the Moroco, but without giving them, contrary to the fact, any occupation in the interior of the country; that his report was not approved by the Spanish Government because of its being too favorable to the Province of Guiana, and he was ordered to send another; that this contained a greater exaggeration of the Spanish claims, because it assigned to the Province the boundary above indicated, which included the whole of the Dutch establishments and all of Spanish Guiana to the Amazon, an extent of territory which Spain never had intended to occupy, and not even to claim, unless the pretension of the King of Spain that all America belonged to him by virtue of the Papal Bull of 1496 could be considered as a claim.

When Blue Book No. 3 invokes passages of a report of Marmion upon Guiana in general, and in which he recommended the

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construction of a fortress on the banks of the Cuyuni, it states that the extract is more significant as to the period from 1770 to 1776, when Centurion had reported that *the Province of Guiana reached to the Amazon on the south and to the Atlantic Ocean on the east;* and that probably the extravagant assertions of Centurion, which were discredited at that time by the Spanish Government, brought about the careful investigations and surveys which are referred to in the reports of Don Miguel Marmion.

Far from the assertions of Centurion having been doubted in Spain, the Spanish Government itself gives to Guiana the same boundaries that he does, to wit: *on the east the Atlantic Ocean and on the south the Amazon River*, as may be seen in the Royal Cedula of May 5, 1768. Lord Salisbury declared it absurd in his note of November 26, 1895, to the Government of the United States of America, because it absolutely ignores the Dutch settlements existing in 1768, not only in fact, but recognized by the Treaty of Munster; and because it would, if considered valid to-day, transfer to Venezuela, British, Dutch and Spanish Guiana and an enormous territory belonging to Brazil.

But the Government of Venezuela in its Memorandum of March 28, 1896, communicated to Mr. Olney and the U. S. Commission on the Venezuela-British Guiana Boundary, vindicated that document, and showed that there was nothing absurd about it; for as to the Dutch Colonies recognized in the Treaty of Munster, they were situated on the coasts or banks of the rivers without penetrating much into the interior, so that the greater part of this belonged to Spain; that Spain had always claimed to the Amazon; that in 1750 she had agreed with Portugal to release a part of the Amazon; but the agreement being annulled by mutual dissent in 1761, her rights were revived, and she could, therefore, in 1768 declare that Guiana was bounded by the Amazon, discovered by Spaniards (the first Vicente Yanez Pinzon); and that in 1777, when she again entered into a treaty with Portugal, in almost the same terms as that of 1750, she reserved

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that portion of the Amazon comprised between the mouth of the Yavari and the most westerly mouth of the Yupura.

In the said Memorandum a great deal was made of the fact that the Spanish Royal Cedula of May 5, 1768, had been the axle upon which turned the boundary controversy between Venezuela and the former New Granada; and that upon the authority attributed to it by the Spanish Monarchy, which was named arbitrator of the rights in the question, it adjudicated part of the Orinoco to the Colombia of to-day, and also a great number of towns which Venezuela had possessed on the other side of it for many years; it having been sustained by the Colombian Government that prescription does not exist in law of nations. Venezuela, in accordance with the agreement of arbitration of the dispute, had to submit to an award which deprived her of no less than seventy-seven towns.

It is thought that the map of Centurion represented not the right of the Spanish Province of Guiana, but the fact of the actual possession of a Dutch post in the Moroco, which the Spaniards had tolerated more than consented to, as is demonstrated by all the acts which they did in that river and in others situated more to the east or southeast of the Orinoco.

And in this connection, there is not a little force in the circumstance that not only did Spain officially declare the boundaries of Guiana to be those expressed in the Royal Cedula of 1768, three years after the date of Centurion's map, but stated in the Treaty of Extradition made with Holland at Aranjuez in 1791, that Puerto Rico, Coro and Orinoco were Spanish possessions, and *Essequibo*, Demerary, Berbice and Surinam were Dutch possessions; and the commission given to Inciarte on February 27, 1779, to construct two forts, one to prevent the attacks which the Dutch might make upon the town which it was proposed to establish close to the creek of the Rio Moroco, and another in the same locality to prevent the passage of all hostile ships, and to drive out the

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Dutch from the advanced post or guard house which they had built there.

At the end of the statement of the British Case regarding the map of Centurion, it is pretended without concealment to apply in America the doctrine called *Hinterland*, which is, as says F. Despagnet, to fix by means of an international agreement a topographical line within which each country has a right to occupy or establish a protectorate to the exclusion of the other contracting state, that is, its *Hinterland* or territory within the conventional line. In other words, *Hinterland* is, according to the same author, the prolongation towards the interior of the territory first occupied on the coast up to the limit of the possessions of the other, and adds that, as said by the German Chancellor in 1886, it is not so much the fixing of the frontiers in conformity with the state of actual possession, as it is the coming to an understanding for the determining of the spheres of reciprocal interest in the future. This new doctrine, which European powers, such as Great Britain, Germany, France and Portugal, have applied and are still applying with regard to occupations on the continent of Africa, has not found a place in international law, and consequently is obligatory only upon the parties who have spontaneously adopted it in their conventions.

In the correspondence carried on in 1896 between the Government of Great Britain and the United States regarding the Venezuelan-English Boundary question, and primarily of general arbitration, Lord Salisbury wrote on the 18th of May, as follows:

> " All the great nations in both hemispheres claim, and are prepared to defend, their right to vast tracts of territory which they have in no sense occupied, and often have not fully explored. The modern doctrine of *'Hinterland'* with its inevitable contradictions, indicates the unformed and unstable condition of international law as applied to territorial claims resting on constructive occupation or control."

To this Mr. Olney replied that "'spheres of influence' and the theory or practice of the 'Hinterland' idea are things unknown

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to international law and do not as yet rest upon any recognized principles of either international or municipal law. They are new departures which certain great European powers have found necessary and convenient in the course of their division among themselves of great tracts of the continent of Africa, and which find their sanction solely in their reciprocal stipulations."

After citing the words of the modern English writer, who discusses the doctrine of "Hinterland" and says that the rule regarding the territorial area affected by an act of occupation in a country of great extent, has been that the crest of the watershed is the presumable interior boundary of the territory, and that the flank boundaries are the limits of the land drained by the rivers which empty into the point of coast occupied; that the extent of territory which may be claimed by virtue of an occupation on the coast has so far been given a reasonable ratio to the character of the occupation, and who, asking what are the limits of the "*Hinterland*," adds: "Either these international arrangements can avail as between the parties only and constitute no bar against the action of any intruding stranger, *or might indeed is right.*" Mr. Olney, without adopting that criticism and putting to one side the question as to whether the doctrines of the "spheres of influence" and the doctrine of "*Hinterland*" are, or are not, intrinsically sound and just, asserts emphatically that "there can be no pretense that they apply to the American continents or to any boundary disputes that now exist there or may hereafter arise."

No opinion of greater authority can be invoked than that of the noted American statesman above named, to reply to the idea given in the British Case, in examining the map of Centurion, by which it applies to doctrine of *Hinterland* to extend the scope of the Dutch occupation of other centuries, in opposition to the preferable and anterior rights of Spain, the discoverer, occupant and colonizer of that territory of Guiana, hostilely invaded by Dutch forces. Not only for the reason that this doctrine was quite

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unknown at that time, but also for the reason that Spain has never accepted it, and because, if it has been recently introduced in Europe, it has been in Africa only, and as a result of special stipulations by the contracting powers, and has no place in international law as far as she is concerned, the arbitrators cannot attribute any value to the argument refuted.

The reasons here set forth are equally applicable to other Spanish maps analagous to that of Centurion.

There accompany the Counter-Case of Great Britain six maps by different authors and of different periods, to wit, Diguja, 1871; Heneman, 1770; Inciarte, 1779; Porter, 1825; Bauza, 1841, and Hohenkerk, 1897, without any observation being offered as to their contents, nor the object for which they are presented.

However, it must be supposed that they tend in general to rebut the claim to the Essequibo boundary contended for by Venezuela.

The first is that of Governor Diguja, in whose time the Province of Barcelona and that of Guiana formed part of that of Cumaná, and purports to show the Governments of Carácas, Trinidad and Margarita bordering thereon, together with the Dutch Colonies situated in the Province of Guiana; the course of the great Orinoco and part of the great rivers which enter in it, and its labyrinth of mouths; the existence of the Spanish towns, villages and places; "doctrinas" and missions of Indians, soldiers, families, souls, houses, farms, churches, contributions of Indians, ecclesiastical state, cocoa farms and their products, cattle farms and how many head of cattle there are, the number of slaves, regular troops and their salaries, debt of the province, resources it counts upon, etc.

If it is proposed to deduce from the map that the boundaries of Guiana did not extend to the Essequibo, it may be answered that the contrary was asserted by Governor Diguja himself, as well as by Centurion, Marmion, Gil and Inciarte, his successors, also Father Caulin, Herrera, Father Murillo Velarde, Alcedo, and

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the engineer and boundary commissioner, Don Francisco Requena, etc.

The map does not extend to the eastward, as it should and as is customary; but we see on it the legend "Dutch Colonies," extending from 6 to 7 degrees of latitude north and about 316 to 317 of longitude, it is not said at what meridian, in a space comprised between the rivers Essequibo and Cuyuni up to a little beyond the latter. There appears, and with its name, "Fort Zelandia;" which, as is known, once existed in the Pomeroon, but which was destroyed by the English in 1666, without ever being re-established; so that in 1761, when this map of Diguja was made, there was no such fortress. What the English left of the Pomeroon Colony in the winter of 1665-66 was destroyed by the invasion of the French, which followed shortly after that of the British. However, as Professor Burr observes, almost up to our own times "New Middelburg" has continued to exist on paper with its fort of "New Zelandia." Among the maps thus criticised by him, naturally this map of Diguja should be included.

As to the proposition in the British Counter-Case to prove the non-existence of the posts of Queribura, Wenamu and Mawaken, it may be said that the opposite assertion is found in an official communication of the Director-General of Essequibo, Storm van's Gravesande, who was himself informed of it by the report of the postholder of Arinda and the information given by the colonist, Francis Couvreur. These communications bear date as follows: that of T. Steyner, the said postholder, May 28, 1756, and that of the Director of Essequibo to the Dutch West Indian Company, July 7th of same year. Consequently, Diguja, in making a map in 1761, might have information of the three places referred to; but his silence regarding them might be the result of ignorance, or due to the lack of data, and his omission a similar error to that committed in naming the fort of "New Zelandia" which had disappeared almost a century before.

The British Case, as though this were enough, has contented

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itself with denying the facts believed by the Dutch officer Gravesande. Mr. Michael McTurk, Commissioner of the District of the Essequibo and Pomeroon Rivers, and who figures in another character since 1884, in the invasions of Venezuelan territory ordered by the Home Government and that of the Colony, in a printed affidavit on page 234, Volume VII of the Appendix to the British Case, and sworn to on the first of November, 1897, before M. P. Alton, Commissioner of Affidavits for British Guiana, says, among other things, what follows:

"2. I know the River Siparuni, a tributary of the River Essequibo. There is, so far as I am aware, no place on it called Mawaken, and I have never heard nor do I believe that there ever was a Mission founded by the Spaniards on the banks or in the neighborhood of that river.

"3. I know the River Massaruni, having frequently ascended both it and its tributaries. There is no place on or near it called Queribura, nor is there any local tradition that the Spaniards had at any time a mission or settlement in the surrounding country. I know the place marked on the map at *Curabiri* near the mouth of the Puruni, which it has been suggested is the same as Queribura. From the nature of the situation it is quite unfit for a Mission, nor could one have been placed there, as it is merely the name of a small fall or rapid in the river, and owing to the surrounding country being swampy forest it is eminently unsuitable for any mission or settlement.

"4. . . . I know the River Wenamu, a tributary on the right bank of the Cuyuni. I have never heard that there ever was a Spanish Mission in that part, but I have been informed that the Dutch lived in that river." [B. C., VII, p. 234.]

By the foregoing it is seen:

1. That the Director-General of Essequibo and the postholder of Arinda *positively* assert the existence of those three places, and Mr. McTurk denies it. 2. That the Director-General of Essequibo and the postholder of Arinda, as Dutchmen, had an interest in concealing the existence of the settlements which they make known, on account of its possible influence upon the boundary between their territories and those of Spain, but they confess it nevertheless; while Mr. McTurk, a British officer and an old and

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vigorous agent in the plans of expropriation of Venezuela, undertakes with all the zeal he is capable of to consummate them; and therefore is entitled to little credit, above all when he has intrenched himself in the camp of denials.

The second map presented is that drawn by Heneman in 1770, and is entitled:

"Sketch Map of the Boundaries between Royal-Spanish and Dutch Guiana on the mainland of South America; belonging to the Report hereon, conceived and chartered by v. Heneman, sworn Engineer."

Nothing better can be said regarding it than what was written by Professor Burr in his report upon the official maps presented to the Washington Commission. Therefore, as it is included in this category, its partiality in favor of Holland is put in evidence.

"But there exists another map by Heneman, of quite another interest and importance; the one map, so far as I am able to learn, ever devoted to the boundary between Spanish and Dutch Guiana (the map is uncolored, except for a stripe of red along the boundary line; this comes out only imperfectly in the reproduction. That the map is a copy, not Heneman's autograph manuscript, is made probable by the omission of his initials, due doubtless to that puzzling monogram already mentioned). It now lies in the library of the department of the colonies at The Hague, though how it came there it is hard to guess. Labels still decipherable on its back seem to show that it once belonged to the collection of the West India Company. Further clew I have not found. The map's title runs:

" 'Sketch Map of the Boundaries between Royal-Spanish and Dutch Guiana on the mainland of South America; belonging to the Report hereon, conceived and charted by v. Heneman, sworn Engineer.'

"The report here mentioned cannot be found. It forms no part of that submitted by Heneman to the West India Company in September, 1776, which nowhere makes mention of this boundary. It is not impossible that it was handed in at the same time as a confidential report. What makes it improbable are the differences between his general map and this special one, and notably the difference in the boundary line itself. The boundary leaves the coast, indeed, at what may be meant for the same point, though changes in the contour of the coast and in the

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spelling of names, the insertion of a new river (the 'Moccomocco') and the omission of an old cape ('Caap Breme') leave this somewhat uncertain. What is more significant is its change in direction. Instead of running south-southwest, as in the general map (and in D'Anville's), it has veered two full points of the compass, and now runs due southwest, no longer cutting (as in D'Anville's map) the Cuyuni and the Mazaruni, but crossing the head waters of the great branches of the Orinoco—the Aguire, the Caroni, the Caura, the 'Paruma' (D'Anville's 'Pararuma'). Just beyond its intersection with the last-named stream this western boundary of Dutch Guiana turns at a sharp angle and becomes the southern boundary, running thence east by south to the edge of the map. When, at whose instance, and for what purpose this map was made, and what sanction, if any, it ever received, it would be of exceeding interest to know. I have sought in vain for any mention of it in the minutes, both open and secret, of the West India Company and of the successive councils which until 1803 followed it in the government of the Guiana colonies. It is possible that it may have been prepared for the Stadhouder, who shared the passion for geography common among the princes of his time and who gathered a rich collection of maps; but if so, he seems never to have made a communication regarding it to the bodies administering the affairs of the colonies." [V. C.-C., vol. 2, pp. 246–248.]

After showing the career of Heneman up to 1804, Professor Burr concludes his statement as to this map as follows:

"How naturally at any time during this long service Heneman might have been turned to for such a map as that in question is apparent. The absence from his map, however, of any indication at the mouth of the Demerara of the new colonial capital, Stabroek which was founded in 1782, makes it tolerably certain that the map antedates the English occupation of 1781. And the fact that Santo Thomé appears at the old site below the Caroni instead of at the new one of Angostura, to which it was removed in 1764, as he could perhaps have learned from Spanish maps available to him in Amsterdam—for those of Cruz Cano and Surville had now been published—adds ground for the belief that he made it before leaving Guiana in 1778. In that case it seems most probable that it was a special task confidentially assigned him as a supplement to that completed in September, 1776, and that the changes from the earlier map grew out of further study, or perhaps out of the suggestion to which the new map owed its birth." [V. C., vol. 2, p. 250.]

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The first map of Heneman, which was to be a general one, Professor Burr says was probably never completed by reason of the necessary expense; that, however that may be, no such map is now to be found among the archives of the company; but there exists there a mere sketch map, giving the results of his surveys, and meant as a basis for a more elaborate one. It comprises the colonies of the Demerara and Essequibo Rivers, as also the abandoned colony of Pomeroon, part of that of the River Berbice, with the further districts, rivers and creeks of the above named colonies, as likewise the contour of the sea-coast and its banks, etc.

With regard to this sketch map, Burr adds the following:

"This map bears no date, and it cannot be quite certain that it was transmitted with its author's report in September, 1776. Yet this *is every way probable;* and, in any case, as Heneman now returned to Surinam, the map's information belongs to this period. When there are taken into account the haste and the hindrances of his work, and the fact that at the same time he prepared and submitted several local charts and many elaborate tables, great accuracy as to the remoter parts of the colonies will hardly be expected; and in particular his portrayal of what lies west of the Essequibo and the Pomeroon does not suggest personal observation. Both as to the coast region and as to the upper course of the Cuyuni and Mazaruni, it seems—what it doubtless is—a mere adaptation of the map of D'Anville. It is, perhaps, therefore, needless to conjecture any other source for the boundary line which appears for a short stretch at the northwest corner of the map. Both in point of departure on the coast and in direction it concurs nearly, though not quite exactly, with D'Anville's line—starting a trifle more to the east and trending a trifle more to the west." [V. C., vol. 2, pp. 245–6.]

In the accompanying Atlas, called Volume IV of the Venezuelan Case, there have been reproduced three maps of Heneman; Nos. 63, 64 and 65, namely, that of the mouth of the Cuyuni, 1772, and that of Essequibo and Demerara, 1775, both taken from the Atlas of the United States Commission; and that of the boundary line between Spanish and Dutch Guiana, which it is said it reproduced from the manuscript original existing in the Department

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of the Library of the Colonies at the Hague, No. 438 of the Catalogue. It bears, with an interrogation expressing a doubt, the year 1776, and has no colors; while the map attached to the British Counter-Case represents in yellow the islands of Orinoco and Essequibo, and the rivers in blue; as well as indicating in red the dividing line between Spanish and Dutch Guiana. It is given, without hesitation, the year 1770, when Heneman had not yet arrived in the Dutch Colonies of America, as it was in 1772 that he visited Essequibo for the first time, and before that time he had only executed a new map of the Surinam Colony, as is seen from a petition addressed by him in 1769 to the Directors of that Colony. The copy produced is certified at the foot in Dutch, the words meaning in Spanish "A true copy, C. A. Eckstein, Director of the Topographical Institute," without any indication of place or date.

These differences seem of little meaning. The esssential thing is that the line of Heneman lacks all foundation, and the reasons upon which he has based it are unknown. Professor Burr asserts it is only an adaptation of the D'Anville line, which he accepted, not by reason of his personal information or of its official authority, but on account of its general reputation for correctness.

Mr. Mallet-Prevost, in his report upon the cartographical testimony of geographers, has made clear that Delisle drew a *regional* line between the Spanish possessions and the country which was wild and uncolonized to the east, without stating it to be the boundary of the Essequibo settlements, which are not shown on the map, and without alleging any reason why in such a case it should begin at the mouth of the Orinoco, as that of Bouchenroeder, who asserted, although falsely, the existence of a Dutch Fort in the Amacuro, confounded by him with the Barima; that D'Anville erroneously converted it into a political line, and that a multitude of geographers have followed in his steps and copied his work in a mechanical manner; that Gravesande and the Dutch West India Company did not know where the boundary was, nor the manner of determining it; and that when the map of

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D'Anville came to their knowledge they accepted it at once *in consideration of his authority*, but without knowing in the least any historical fact whereby to fix it, and that thus it is not based upon historical research nor upon the inquiries of the people who must be supposed to have been best informed about the facts; and that the so-called *Schomburgk line* was taken by him from the maps of Arrowsmith, which line was in turn derived successively through Bouchenroeder, Jefferys, Thompson, D'Anville and Delisle; and that there never would have been proposed such a line as Schomburgk's if Delisle had not marked out a century before the western limits of the Spanish usurpation upon savage Guiana; and if the error of D'Anville, who badly interpreted Delisle, had not been perpetuated by a multitude of geographers and map makers, who, without examination, accepted the authority of the great name of D'Anville.

The third map presented by the British Counter-Case is one entitled: "No. 110. Plan of various lands of the Lower Orinoco, drawn by Don José Felipe de Inciarte, and mentioned in No. 37 of the Extract."

There is placed on it the date of 1779. It indicates hills, savannas, and valleys for different purposes, a site upon which if an outpost and a town were made it would cut off the communication which the Dutch hold through these streams with the Indians of the same and of the Orinoco, "a little hill on the bank of the Barima, which it will be well to fortify"; "the banks at the mouths of the Barima, Guiama and Baruma, although marked with crosses, consist of mud and sand without any stones whatever"; "Post or Guard, that the Dutch have in the Moruca River"; "Villages and Farms of the Indians of the Arawak Nation"; "the number of feet of water which are found in navigating along the coast, from Baruma as far as the northern end of the Waini mud bank, without going out to sea more than a league, nor coming nearer to land more than half a league."

At the end of these explanations, some being marked with

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numbers and others with capital letters, is the following "NOTE: That all the lands which this plan has left without other indication, are low, without hills, almost all overflowed and marshy, and therefore unsuitable for farms; they are covered with numbers of mango trees (these in great quantity), also puruas, zapateros and mulberry trees, and an abundance of timity and manaca."

At the foot there appear, at the right, these words: "A true copy of the original existing in the archives of this bureau. Nicolas de Urata, Commissioner of E. M., Chief of Bureau."

"Visaed: Benites, Colonel, Chief of the Department of War."

It lacks an indication of the place and date in which the certification was made, and the nation and the archives from which the map was taken.

Certainly it must be Spanish, but it does not say so.

In the report of Inciarte to Señor José de Abalos, dated at Carácas, November 27, 1779, he says:

"Herewith I send to Your Excellency *a plan of all the lands* I have visited, remarking that, of all that said plan contains only the branch Macuro, part of the Tapacuma, the part of the branch from Visororun and the river Essequibo have been drawn according to information of the Indians, while all the rest has been drawn with the distances and demarcations which I have personally taken in surveying the lands during the expedition." [V. C. vol. 2, p. 438.]

Doubtless, this is the map now presented by Great Britain.

There has not been found a map of the Province of Guiana, of which mention is made in the narration of the visit made to Inciarte when he was Governor thereof, at the beginning of this century, by an officer of the Dutch colony, to whom he presented a copy upon his return, as a favor added to many others which he had heaped upon him.

For what purpose the map of Inciarte has now been produced is not divined. If it is because it shows the Moruka post, it is

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well to remember that Spain has never denied its existence, but considered it as the result of her own toleration and not of right.

When Inciarte was commissioned to establish towns in the province of Guiana and to occupy the territories of its eastern part, by the Commandant-General, Don José de Abalos, the latter informed him that as the boundaries of Guiana commenced on the east to the windward of the outflow of the River Orinoco into the sea on the border of the Dutch Colony of Essequibo, that this and the other colonies of the States-General were nearly all on the banks of the rivers near the seashore, and that to the rear of Essequibo and the other Dutch possessions running to the eastward as far as French Guiana, and on the South as far as the Amazon River, the land was unoccupied by the Dutch, and only occupied by the gentle Indians and a large number of fugitive slaves of the Dutch and also of the plantations of Guiana; for which reason the commissioners should effect the occupation of those lands as belonging to Spain, their first discoverer, and not ceded thereafter nor occupied at that time by any other power, nor did any other power have any title thereto, advancing in the occupation towards the east as much as possible until reaching French Guiana and extending themselves also as far as possible on the south until reaching the frontiers of the crown of Portugal.

By a Royal Cedula of the first of October, 1780, the construction of the two forts near the Essequibo was ordered, as well as the ousting of the Dutch from the post or advanced guard which they had constructed on the Moruka. Finally, Inciarte in his last report of September 5, 1783, concludes by highly recommending the occupation of that Moruka post, abandoned by the Dutch by reason of the French having overpowered the colony of Essequibo, and he also urges its provisional fortification, and the establishment of a town of the native Indians which inhabited that neighborhood.

Among the documents of Venezuela there has been printed a petition of citizens of Guiana to the Spanish Government against

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Inciarte for not having carried into effect the founding of the towns which he was instructed to do before he was made Governor of that province.

The fourth map is a copy made in Caracas about 1825, and sent to the British Museum by Sir Robert Ker Porter, then Consul of Great Britain here, presumably from a Spanish sketch of many years earlier. It is called "Topographical Chart of the Department of Caroni." It is not known who was the author, and has the names of many of the ancient missions. It is not certain what relation it has to the boundary question.

The fifth map is of 1841 and by the Spanish engineer, Don Felipe Bauzá, comprising various provinces and parts of others, among these Guiana. It is founded upon the work of Churucca, and Fidalgo, as well as that Ferrer, and very particularly upon that of Baron de Humboldt, and on the unpublished charts and private plans of Solano, and on those of the campaign of General Murillo, and many documents of the officers of the Royal Armarda, Doz and Guerrero, and of the engineers Cramer and Primo de Rivera, of Don José de Inciarte and of the pilot of the Spanish trade to the Indies, Don Joaquin Morreno. It is duly certified in Madrid on May 4, 1898, by the archivist of the Archives of the Hydrographic Office, Senor Joaquin de Ariza, for James H. Reddan, Commissioner of the Government of Her Britannic Majesty. It shows all of the towns, villages, places, existing and ruined, missions, ranches, farms, sugar mills, cattle farms, castles, towers, Indian villages, silver mines, trails, roads and royal highways.

It gives as the boundaries of British Guiana a line which starts from a point on Moruka Creek and runs in a southwesterly direction to the Rinocote Mountains, and from thence runs to the southeast and terminates at the source of the Pomeroon River, apparently in conformity with that of Humboldt, which is elsewhere analyzed.

The last is a chart of the mouth of the Waini River and

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the Mora or Morawhanna Passage, which it says is situate in the northwest district of the colony of British Guiana, surveyed by L. S. Hohenkerk, Government Surveyor, on October 28, 1897.

Probably it is intended to illustrate the attitude taken by the British Counter-Case in the matter of the topographic configuration of the territory in dispute.

Caracas, October 22, 1898.

(Signed) RAFAEL SEIJAS.

THE LINES OF SCHOMBURGK AND OF CODAZZI.

[*Translation.*]

The line drawn by Schomburgk is in no wise binding upon Venezuela just as the line traced by Codazzi is in no wise obligatory upon Great Britain. These lines constitute no legal evidence, and will have before the arbitrators only a relative moral value, and rest exclusively upon the authority, capability and independence that they accord to the authors thereof. In such respects the Codazzi line has a greater moral value than can be conceded to that of Schomburgk. Let us proceed to demonstrate it.

Schomburgk visited Guiana for the first time in 1834, when he was thirty years of age. He was then a young man who, having failed in his original trade of tobacconist in the United States, had changed his profession, and thereupon essayed that of surveyor. He arrived in Demarara as an employé of the Royal Geographical Society of London, for the purpose of exploring British Guiana. Subsequently he continued his work in the pay of the British Government, until 1843, when he left it completed, and we are not surprised that he fixed the limit of Demarara at the right bank of the Orinoco; what surprises us is that he should not have placed it

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on the left bank, and even farther still within the lands lying to the west of the Caribbean Sea.

The Codazzi line has quite a different source. Born in Italy, and brilliantly educated as a mathematician, Codazzi undertook a voyage to old Colombia, fascinated by the glories of the Liberator Bolivar, and stimulated by his own desire for a military career, in which he had distinguished himself in his native country, having taken part in the campaigns of 1812 to 1815 as an engineer officer. The Italo-Britannic army in which he had served having been disbanded after the last campaign, he gave himself to travel, and visited Greece, Wallachia, Moldavia, and Germany. He was also in Rome, Poland, Prussia, Denmark, Sweden and Holland. It was in Amsterdam that he was struck with the desire to go to the land of Bolivar, and from there set sail for the United States, bound for Colombia. By 1820 he had already enlisted in the Colombian army in the service of his adopted country, in which he obtained the full rank of Colonel of Engineers.

He employed the years 1828 and 1829 in preparing the corographic chart of the whole Department of Zulia. The work was so perfect that upon its recommendation by General Paez to the Constituent Congress of 1830, that august body ordered that maps of the entire Republic be made, and Colonel Codazzi was designated by the Executive to undertake the arduous task. In this he spent ten years, and then published in Paris in 1840 the result of his splendid and valuable work. In the study of the Province of Guiana he spent the years 1838 and 1839 traversing its deserts, navigating its mighty rivers, and studying, upon the land, with the documents before him, the frontiers bordering upon Brazil and British Guiana.

The work of Codazzi merited the most sincere approbation of men of science of his age. The French Academy congratulated the Venezuelan Congress for the protection it had accorded to the work of the wise geographer. The Geographical Society of Paris awarded him the annual first prize, consisting of a silver medal.

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The Geographical Society of London sent him a communication abounding in flattering expressions for the author. The Institute for the Promotion of Science in Washington elected him a corresponding member. His Majesty Louis Phillipe, King of the French, decorated him with the Cross of the Legion of Honor. And, finally, his adopted country received him with great enthusiasm, and the Government of Venezuela declared that by such important surveys Colonel Codazzi had made himself worthy of national recognition.

When the two men—the geographer and the surveyor—are compared one with the other, Codazzi appears a giant and Schomburgk a pigmy. So that the moral worth of the work of Codazzi is undoubtedly superior to the work of Schomburgk.

Notwithstanding this, the Government of Venezuela, in the copious array of documents which this discussion has brought forth, never boasted of the work of Codazzi; but on the other hand, since 1841, the British Government has never ceased to invoke the work of Schomburgk, as if it were an irrefutable authority, an incontrovertible proof of its right, a definitive proprietary title drawn up in its favor by that surveyor. Why, the name of Schomburgk has been used to such an extent in the British publications that if one were to take the trouble to abstract this name every time it has been used in the British documents since 1841, and place the names so collected in a row, there would be formed a line many kilometers in length, which would be the *true Schomburgk line*, and which would have a greater moral value than the original line drawn by him in 1841.

Paris, November 4, 1898,

(signed) J. M. DE ROJAS,

Agent of Venezuela.

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BRITISH DIPLOMACY IN CARACAS FROM 1830 TO 1850.

[*Translation.*]

It cannot be denied that Great Britain gave very valuable assistance to old Colombia during her war for independence. Venezuela, upon separating from Colombia in 1830, exerted herself to recognize those services by a very cordial friendship, to which end one of her first diplomatic acts was the sending of a Minister to London, for the purpose of resigning the treaty of commerce and navigation made by Great Britain in 1825 with the old Republic of Colombia. The Venezuelan Envoy signed the said treaty without completing it, as was provided in one of the articles of the treaty which was signed in Bogota in the greatest hurry, and in consequence it remained without the time of its duration being fixed. But in the period of sixty-nine years which have elapsed since then, each time that the Government of Venezuela has proposed to revoke the said treaty the Government of Her Britanic Majesty has claimed that the treaty was perpetual, and could not be revoked without the terms of its proposed substitute being previously made known, basing such an extraordinary position, perhaps, upon the wording of the first article of said treaty, which reads as follows:

I. "There shall be perpetual, firm and sincere Amity between the Dominions and Subjects of His Majesty the King of the United Kingdom of Great Britain and Ireland, His Heirs and Successors, and the State and Peoples of Colombia."

Such a doctrine is to-day repudiated by the principal professors of international law, who hold that when a treaty of commerce has not fixed the limit of its duration, it is understood that each party has the right to revoke it upon giving one year's notice to the other.

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The first diplomatic agent of Great Britain in Caracas was that distinguished gentleman, Sir Robert Ker Porter. He was born in Durham in 1780, so that when, in 1836, he requested the Government of Venezuela to establish a lighthouse on Barima Point, he was already fifty-six years of age. Sir Robert Ker Porter arrived in Venezuela with the prestige of his antecedents as a soldier, a diplomat, litterateur and artist, he being a noted painter, and had, in 1804, been called to Russia and appointed historical painter to the Emperor. In 1811 he married Princess Marie, daughter of Prince Theodore de Sherbatoff, of Russia. He served his native country as a diplomat and soldier in various places on the Continent of Europe—in Russia, Persia and Spain—and also in South America. In 1841, with permission of his Government, he left Caracas for Europe, and died suddenly in St. Petersburg on May 3, 1842, a few hours after having taken leave of the Emperor. It is inexplicable that a man of such great personal prestige should invite the Government of Venezuela to establish a lighthouse on Point Barima without the authorization of his Government, and at least without informing it of his action, while it appears from the books presented that the British Government only had notice of it in 1842.

So cordial at this time were the diplomatic relations between Venezuela and Great Britain that in 1837 King William IV., as a token of admiration for the conduct of General Paez, father of the Independence of the Republic, and its first President, presented him with a sword bearing the following inscription:

"The gift of King William the Fourth to General Paez, as "a mark of esteem for his character, and for the disinterested "patriotism, which has distinguished his gallant and victorious "career, 1837."

This explains why the mission of the surveyor, Robert Schomburgk, to the Orinoco, in 1841, caused an immense surprise in Venezuela; but the Government being desirous of cultivating the most friendly relations with Great Britain, permitted itself to

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submit to a foreigner's thus, without previous permission on its part, invading its territory armed with authority and instructions to ascertain what belonged to the British Colony.

At the time of the death of Sir Robert Ker Porter, there was already in Caracas a representative of Great Britain, Mr. Daniel O'Leary, General of the Colombian army, who had fought under the orders of Bolivar in the war for independence, and might well have been considered a Venezuelan, not only for his services to his adopted country, but also by reason of his social connections, he having married one of Venezuela's most prominent women. The presence of General O'Leary contributed greatly to calming the public excitement, and General Paez, President of the Republic, for the second time during that period, limited himself to the statement, in his Message to the Congress of the Republic, of what follows:

" A disagreeable event, promising to affect our relations with Great Britain, has occupied the attention of the Government, and caused inquietude in the minds of our citizens. The Government of Her Britannic Majesty, desiring to ascertain the boundaries of her possessions in British Guiana, despatched a Commissioner to explore the territory, and designate the line which, in his judgment, should divide it from its neighboring countries. But the Commissioner not only fixed the said line within the territory of Venezuela, but did so in such a solemn manner, and employed such formal signs, that it had more the appearance of taking possession and exercising acts of sovereignty, than of his being engaged in a mere preliminary examination or purely provisional work, guided only by his own knowledge and private opinion—which latter has turned out to be the case according to the explanation given by the Governor of British Guiana, and also in the answers received from the British Government by our plenipotentiary in London. They leave no doubt that, whatever excesses may have been committed by the Commissioner, it has been far from the intention of Her Majesty to occupy

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any part of the territory of Venezuela, and that the fixing of the boundary is subject to discussion between the two Powers. Such a result, which has had the effect of quieting our countrymen, makes us hope, also, that the justice with which the Republic sustains its rights will be seen and recognized in the Treaty which is necessary to terminate this matter."

This language, so moderate, so sensible, and so friendly toward Great Britain, notably contrasts with the following words of the British Government to the Envoy of Venezuela on February 10, 1890:

"As regards the frontier between Venezuela and the Colony of British Guiana, Her Majesty's Government could not accept as satisfactory any arrangement which did not admit the British title to the territory comprised within the line laid down by Sir R. Schomburgk in 1841."

Mr. O'Leary having been sent to Bogota in the diplomatic capacity which he exercised, he was substituted in 1843 by Mr. Belfort Hinton Wilson, as the diplomatic representative of Great Britain in Caracas. Mr. Wilson had the rank of Colonel in the Colombian army since 1822, when he arrived in Venezuela, and was, up to the last moment, one of the aides-de-camp of the Liberator Bolivar; and so much thought of by him that the Liberator wrote, in the twelfth clause of his will, the following:

"I direct my executors to give thanks to Mr. Robert Wilson for the good conduct of his son, Colonel Belfort Wilson, who has accompanied me so faithfully up to the last moments of my life."

Mr. Wilson retired from Venezuela in 1851.

The presence of two British diplomatic agents, who represented their native country in Caracas during ten years, and who, by reason of their military antecedents in Colombia, must have been *personæ gratissimæ* to the Government and people of Venezuela, came finally to be prejudicial to the Republic; for the intimate confidence that each inspired left the public sentiment quite unsuspecting regarding any ulterior views that the British Govern-

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ment might have upon the question of the boundaries of Guiana; and this explains the deficiency of that convention known as the "*Modus vivendi*" entered into in 1850 between Señor Lecuña, Venezuelan Minister of Foreign Affairs, and Colonel Wilson, Chargé d'Affaires of Her Britannic Majesty in Caracas—a convention agreed upon when France was consummating the brilliant conquest of Algeria, and the desire for the colonization of foreign lands was just being developed in Europe.

This is the exact story of British diplomacy in Caracas from 1830 to 1850.

Paris, November 1, 1898.

(signed) J. M. DE ROJAS,
Agent of Venezuela.

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